

Exhibit E

Additional Provisions

The use of headings or titles throughout this exhibit is for convenience only and shall not be used to interpret or govern the meaning of any special provision.

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Exhibit E Additional Provisions

1. Additional Incorporated Exhibits

The following additional exhibits are attached, incorporated herein, and made a part hereof by this reference:

Exhibit I: The Cost Proposal submitted by the Contractor on (enter date).

Exhibit J: The Technical Proposal submitted by the Contractor on (enter date) but only to the extent that such provisions are a response, or are otherwise related to the California Dental Medicaid Management Information Systems Request for Proposal Number 03-75006, as incorporated into this Agreement by reference. These Technical Proposal provisions include _____ except _____.

2. Contract Amendments

Should either party, during the term of this agreement, desire a change or amendment to the terms of this Agreement, such changes or amendments shall be proposed in writing to the other party, who will respond in writing as to whether the proposed changes/amendments are accepted or rejected. If accepted and after negotiations are concluded, the agreed upon changes shall be made through the State's official agreement amendment process. No amendment will be considered binding on either party until it is formally approved by the State.

3. Cancellation/Termination

A. Immediate Termination for Cause

The Department reserves the right to immediately terminate this contract in whole or in part by providing written notice to the Contractor after the occurrence of any of the following:

- 1) If the Contractor knowingly furnished any statement, representation, warranty or certification in connection with the Request for Proposal of this contract, which representation is materially false, deceptive, incorrect, or incomplete;
- 2) If the Contractor fails to perform any material requirement of the contract or defaults in the performance of this contract;
- 3) If the Department determines satisfactory performance of the contract is substantially endangered by the action or inaction by Contractor, or can reasonably anticipate such occurrence of default; or

- 4) If the Contractor files for bankruptcy or, if in the judgment of the Department, the Contractor becomes financially incapable of completing this contract.
- 5) The State shall not be liable for any costs beyond previously approved commitments incurred by the Contractor if termination is for any of the causes stated in paragraphs 3.A.1) through 3.A.4) above. In the event the Department terminates this contract in full or in part as provided in this clause, the Department may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those terminated, and the Contractor shall be liable to the State for any excess costs reasonably incurred for supplies or services. In addition, the Contractor shall be liable to the State for administrative costs incurred by the Department in procuring such similar supplies or services. However, the Contractor shall not be liable for any excess costs or administrative costs if the failure to perform the contract arises out of causes beyond the control and without fault or negligence of the Contractor or any of its subcontractors.
- 6) In the event of termination at other than the annual adjustment period for the Pure Premium Rate, and in order to ensure that a fair payment is made during the time the contract is in effect, the Department shall have the right to actuarially align the Pure Premium Rate payment in effect at the time of termination.

B. Termination for Convenience

The Department retains the option to terminate this contract without cause at the Department's convenience, provided that written notice has been delivered to the Contractor at least thirty (30) days prior to such termination date. If the Department terminates this contract at its convenience, the Contractor will be entitled to compensation upon submission of an invoice and proper proof of claim, in that proportion which its services and products were satisfactorily rendered or provided and its expenses necessarily incurred pursuant to this contract, up to the date when notice of termination is received by the Contractor (hereinafter referred to as "the notice date"). In such event, at the request of the Department, the Contractor shall furnish copies of all proposals, specifications, designs, procedures, layouts, copy, and other materials related to the services or deliverables provided under this contract, whether finished or works in progress on the termination date. The Contractor will not be entitled to reimbursement for any expenses incurred for services and deliverables pursuant to the contract after the notice date, unless the Contractor receives written advance approval from the Department. Any services or deliverables for which the Contractor is paid which are provided according to the procedures in this paragraph shall become the property of the Department.

C. Termination for Non-Compliance with Financial Criteria

The Department may terminate performance of work under this contract in whole or in part whenever the Contractor fails to meet each of the financial criteria in this contract. In the event of a termination for non-compliance with financial criteria, the rights and obligations of the Department and the Contractor shall be specified in this section.

D. Rate Considerations

In the event of termination at other than the annual adjustment period for the Pure Premium Rate, and in order to ensure that a fair payment is made during the time the contract is in effect, the Department shall have the right to actuarially align the Pure Premium Rate payment in effect at the time of termination.

4. Procedures On Termination

After receipt of notification of termination of this contract, and except as otherwise specified by the Department, the Contractor shall stop work under this contract on the date and to the extent that they relate to the performance of work that is specified in the notice of termination. The Contractor shall do all of the following:

- A. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under this contract that is not terminated;
- B. Assign to the Department effective on the date of termination, in the manner and to the extent specified by the Department, all of the rights, titles, and interests of the Contractor under the orders and subcontracts terminated, in which case the Department has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts and reduce any settlement amount determined by the amount paid for such orders or subcontracts;
- C. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Department to the extent the Department may require. The Department's approval or ratification shall be final for the purposes of this section;
- D. Upon the effective date of termination of the contract and the payment by the State of all items properly chargeable to the State hereunder, transfer, assign, and make available to the State all property and materials belonging to the State, all rights and claims to any and all reservations, contracts, and arrangements with subcontractors and make available to the Department, all written information regarding the Department's Provider Relation's publications and materials and no

extra compensation is to be paid to Contractor for its services in connection with any such transfer or assignment; and

- E. Take such action as may be necessary, or as the Department may specify, to protect and preserve any property related to this contract that is in the possession of the Contractor and in which the State has or may acquire an interest.

5. Use of Disabled Veteran Business Enterprises (DVBE)

- A. The State Legislature has declared that a fair portion of the total purchases and contracts or subcontracts for property and services for the State be placed with disabled veteran business enterprises.
- B. All DVBE participation attachments, however labeled, completed as a condition of bidding, contracting, or amending a subject agreement, are incorporated herein and made a part of this agreement by this reference.
- C. Contractor agrees to use the proposed DVBEs as identified in previously submitted DVBE participation attachments, unless the Contractor submits a written request for substitution of a like or alternate subcontractor. All requests for substitution must be approved by DHS, in writing, prior to using a substituted subcontractor.
- D. Requests for substitution must be approved by the program funding this agreement and must include:
 - 1) A written explanation of the reason for the substitution.
 - 2) A written description of the business enterprise that will be substituted, including its DVBE certification status.
 - 3) If applicable, the reason a non-DVBE subcontractor is proposed for use.
 - 4) A written description of the work to be performed by the substituted subcontractor and an identification of the percentage share/dollar amount of the overall contract that the substituted subcontractor will perform.
- E. If requested by DHS, Contractor agrees to provide verification, in a form agreed to by DHS, that DVBE subcontractor participation under this agreement is in compliance with the goals specified at the time of contract award or with any subsequent amendment.

6. Priority Hiring Considerations

- A. Contractor agrees that it shall give priority consideration in filling vacancies in positions funded by this agreement to qualified recipients of aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions (W&I) Code, in accordance with Article 3.9 (commencing with Section 11349) of Chapter 2 of Part 3 of Division 9 of the W&I Code.
- B. This provision shall not be construed to do any of the following:
 - 1) Interfere with or create a violation of the terms of valid collective bargaining agreements;
 - 2) Require the Contractor to hire an unqualified recipient of aid;
 - 3) Interfere with, or create a violation of, any federal affirmative action obligation of a contractor for hiring disabled veterans or veterans of the Vietnam era;
 - 4) Interfere with, or create a violation of, the requirements of Section 12990 of the Government Code implementing the State of California's nondiscrimination laws.

7. Delegation of Authority

- A. The Department intends to implement the contract through a single administrator, herein called the "Contracting Officer." The Director of the Department of Health Services shall appoint the Contracting Officer. The Contracting Officer may delegate his/her authority to act to an authorized representative through written notice to the Contractor.
- B. The Contractor shall designate a single administrator, herein called the Contractor Representative, who shall be located in the Contractor's Sacramento area facility. The Contractor Representative shall be the Contractor's Official responsible for managing the Contractor's operation. The Contractor Representative shall be empowered to legally bind the Contractor to all agreements reached with the Department, including those related to the data processing center and services.
- C. The Contractor must designate the Contractor Representative in writing prior to contract execution. Such designation shall be submitted to the Contracting Officer in accordance with Exhibit E, Additional Provision 11.A., Contract Communication.

8. Term Of The Contract

- A. The term of this contract is anticipated to be for a total of six (6) years, two (2) months, beginning August 2, 2004, and continuing through September 30, 2010, with three (3), one (1) year optional extensions. This timeframe includes a nine (9) month period for Takeover, in accordance with Takeover requirements; a four (4) year Operations period; and a fifteen (15) month period for completion of Runout and Contract Closeout. The first (1st) year of Operations will begin on May 2, 2005, and end on June 30, 2006, which is fourteen (14) months versus one (1) full year (twelve (12) months). Subsequent contract years will begin on July 1 and end on June 30, said dates to coincide with the State's fiscal year period. The contract may continue through September 30, 2013, if all three (3) optional extension periods are used. The agreement term may change if the Department makes a selection earlier than expected or if the Department cannot execute the agreement in a timely manner due to unforeseen delays.
- B. The resulting contract will be of no force or effect until it is signed by both parties and approved by the Department of General Services, if required. The Contractor is hereby advised not to commence performance until all approvals have been obtained. Should performance commence before all approvals are obtained, said services may be considered to have been volunteered.
- C. The four (4) year Operations Period and underwriting responsibility will commence on the first (1st) day of the ninth (9th) month after contract effective date, subject to the Department's acceptance of the Contractor's readiness to perform claims and Treatment Authorization Request (TAR) processing functions and/or the underwriting function. If TAR and claims processing and/or the underwriting function is delayed, the Department may, at its option, either (1) shorten the Operations Period by the amount of the delay, or (2) require the Contractor to adhere to the first (1st) fourteen (14) month year and subsequent three (3) full years Operations Period. In the event the Department selects option (2) above, all timeframes related to the Turnover/Runout phase will be delayed by the same amount of time as the delay of claims/ TAR processing and/or underwriting function. The Operations Period will be subdivided into one (1) fourteen (14) month phase and three (3), one (1) year phases.
- D. The Contracting Officer shall have the exclusive option to extend the term of the Contractor's Operations and underwriting responsibilities during the last twenty-seven (27) months of the contract, as determined by the original termination date or a new termination date if an extension has been exercised. The Contracting Officer may extend the contract up to three (3) times for one (1) year each. The Turnover, Runout and Underwriting Periods will be adjusted accordingly. The Contractor shall be given at least ninety (90) days prior written notice if the Department chooses to extend the contract.

- E. During any of the extension periods addressed above and during any period of Extended Operations, the Contractor's responsibilities shall remain the same as are defined in the contract. Unless the Department elects an Extended Operations Period, the Operations Period shall terminate the first (1st) Friday following the start of the State fiscal year (July 1 through June 30).

9. Federal Financial Participation and Time Study

A. Federal Financial Participation

- 1) The CD-MMIS complies with the federal MMIS system as described in Title 42, United States Code, Section 1396b(r)(6), and regulations adopted pursuant thereto. Section 1396b(r)(6), its associated regulations, and the guidelines to these regulations are made a part of the contract by this reference. In addition to the federal requirements referenced above, the CD-MMIS also provides enhancements to the federal MMIS. The Contractor is required to support these enhancements, as provided in the contract.
- 2) The Contractor shall also comply with the State Medicaid Manual, Part 11. Section 1396b(a)(3) also provides increased federal financial participation (FFP) to the Department for the development and operation of a system such as the CD-MMIS. If through the negligence, error or omission of the Contractor or subcontractors, federal approval is not granted or maintained because of failure to meet federal requirements, the Contractor shall be liable to the State for the difference between the amount of the federal matching funds which would have been provided under Section 1396b(a)(3) and Section 1396b(r)(6) (Ninety percent (90%)/Ten percent (10%) split for design, development and installation and Seventy-five percent (75%)/Twenty-five percent (25%) split for operating cost) and the matching funds actually provided. The Department will determine in writing if the reduction of federal funding was caused by the Contractor, or by the State, or was caused by both the Contractor and the State. In the event that the cause of the loss of federal matching funds is shared, the Contracting Officer shall apportion the degree of Contractor fault (stated as a percentage), and the Contractor shall be liable to the State for that percentage of federal funds lost, as described in the preceding paragraph. Any such Contractor liability will be offset from payments to the Contractor from the State.
- 3) The Contractor may be required to develop Advanced Planning Documents (APD) for purposes of modifications to the system for increased FFP. If the Center for Medicare and Medicaid Services (CMS) does not approve the maximum allowable FFP due to problems with any APD written by the Contractor or supporting documents supplied by the Contractor (e.g., information is not complete; APD was not submitted timely; etc), the Contractor shall be liable for the monetary difference between the maximum allowable FFP and the actual amount of FFP allowed. The Department will

ascertain if the cause for the reduced funding is the responsibility of the Contractor. If determined to be Contractor-caused, the Contractor's enhancement payment shall be reduced by the dollar amount of FFP reduced by CMS.

B. Time Study

- 1) The Contractor shall perform time studies of all personnel working on Provider Services. The Contractor shall perform the time studies nine (9) months after the date of assumption of claims processing and annually thereafter.
- 2) The purpose of the time study is to determine which, if any, activities being performed by the Contractor's personnel qualify for seventy-five percent (75%) or fifty percent (50%) FFP. The Contractor shall develop a matrix showing each employee classification, listing all activities performed and a time survey document that emulates the matrix. The time study may be in increments of minutes or as agreed upon by the Contractor and the Department for the particular activities being performed by Provider Relations staff. The Department shall be responsible for attributing fifty percent (50%) FFP, or seventy-five percent (75%) FFP to each classification.

10. Conformance With State And Federal Statutes and Regulations

- A. The contract employs Title 19 of the federal Social Security Act (42 U.S.C.1396 et seq.) and, accordingly, the Contractor agrees to conform to such requirements and related regulations on the date the contract becomes effective, to include all future amendments to the law, regulations or guidelines, provided:
- 1) Changes which would materially affect costs of performance shall only be implemented with written approval of the Contracting Officer pursuant to the contract; and
 - 2) That no confidential data is to be released without prior, written Department approval from the Department or prior written approval from the beneficiary concerned.
- B. In addition, the Contractor shall comply with the requirements of California and federal law, to include related regulations and published guidelines, to the extent that these authorities contain requirements applicable to Contractor's performance under the contract. These authorities include, without limitation, the California Welfare and Institutions Code, the California Government Code, the California Public Contract Code, the Code of Federal Regulations, Title 2 and Title 22 of the California Code of Regulations, and the Health Insurance Portability and Accountability Act (HIPAA) of 1996 (Public Law 104-191, dated August 21, 1996). (See Exhibit H, HIPAA Business Associate Addendum.)

11. Contract Communication

- A. Any notice required by the contract shall be written and sent by registered or certified mail, return receipt requested, or shall be delivered in hand and a receipt given by the recipient, and shall be effective upon receipt by the Contracting Officer or the Contractor, whichever is the addressee;
- B. Notwithstanding any other provision of the contract, any Contracting Officer's approvals must be received in writing by the Contractor prior to the Contractor taking any action requiring such approval, unless the Contracting Officer specifically exempts, in writing, the Contractor from this requirement;
- C. The Department shall be bound only by Fiscal Intermediary (FI) letters, unless otherwise specified in this RFP. These FI letters represent the Department's direction to the Contractor; are issued by the Contracting Officer, or representative, over the Contracting Officer's signature block; and are sequentially numbered. The Contractor shall respond with its own set of sequentially numbered letters issued by the Contractor Representative or designee, which shall bind the Contractor; and
- D. The Contractor shall provide twice daily courier service between the Contractor and the Contracting Officer, between the Contractor and Department on-site staff, and between the Contracting Officer and Department on-site staff. The Contractor shall provide daily courier service between the Contractor and all report users, who will be designated by the Contracting Officer, within a twenty-five (25)-mile radius of the State Capitol. Reports for users outside the twenty-five (25)-mile radius shall be mailed to them in accordance with requirements of Exhibit A, Attachment II, Operations. The Contractor will be cost reimbursed for postage only. All Contractor reports shall be in hardcopy or via such other media as may be prior approved by the Contracting Officer. The Contractor and the Department shall respond to each other in five (5) business days, or a time period, which may be shorter or longer, designated by the Contracting Officer.

12. Contractor and Subcontractor Employees

- A. During the term of the contract, the Department reserves the right to approve, in advance and in writing, any personnel changes made by the Contractor that address the Contractor Representative, Dental Consultant staff, and all other individuals assigned as senior management. Senior management shall be those individuals having direct managerial and administrative responsibility and control for all functional areas described in Exhibit A, Attachments I through IV, Scope of Work. These individuals shall report to the Contractor's Representative. However, one intervening management level may occur between these individuals and the Contractor's Representative if this intermediate manager reports directly to the Contractor's Representative and is also designated as senior management as described in this section. All additional staff who directly

report to the Contractor's Representative shall be considered senior management and subject to this section.

- B. Senior management staff shall be stationed within a twenty-five (25) mile radius of the Contractor facility and the Contractor shall assign these management personnel to work on the contract full time. The Contractor must commit to having those persons named as Contractor Representative or as senior management at time of submission of the Technical Proposal to remain assigned to the contract for a period not less than two (2) years (and the Contractor Representative three (3) years) from the Contract Effective Date, unless that person leaves the employment of the Contractor, any affiliates, and any subcontractor; or Department approval is granted to transfer him/her sooner. The Contractor shall replace managers in these positions only upon thirty (30) days' notice to the Department, or such other time interval as may be agreed to by the Contracting Officer.
- C. Any person assigned as a replacement to the Contractor Representative shall be assigned to the contract for at least two (2) years, with the following exceptions:
 - 1) If that person leaves the employment of the Contractor, any affiliates, and any subcontractors;
 - 2) There is less than two (2) years remaining in the contract, in which case the assignment will be until the end of the contract; or
 - 3) Contracting Officer approval is granted.
- D. The Department may disapprove the assignment of an individual to a senior management position in the contract or demand that a person be transferred from a senior management position. The Department will not unreasonably exercise this authority.
- E. Further, the Department will have the same rights as specified above as to individuals who assume expert witness responsibility and individuals for whom the Department pays hourly reimbursement.
- F. Conviction of a felony shall disqualify an applicant/employee from work under the contract.

13. Contractor Resource Levels

The contract requires that the Contractor meet all the contractual requirements and responsibilities listed herein. The Contractor shall provide sufficient resources including staff and staff support to fully execute all responsibilities required by the contract. All Contractor Management staff shall be available between the core hours of 9:00 a.m. - to 4:00 p.m., Monday – Friday, excluding State holidays. Once a

month, by the fifth (5th) day of the month, the Contractor shall provide the Department with a report of the number of staff by area and classification currently working on the contract compared to the staff proposed in its Technical Proposal or as modified with approval of the Contracting Officer. This report shall be in the same format as used for Takeover and shall be by function and classification. This report shall show average staffing for the past twelve (12) months, beginning with the first (1st) prior month.

A. Hourly Reimbursable Employees And Special Groups

This provision applies to the contractor employees paid on an hourly reimbursable basis or who are employed in an hourly reimbursable special group.

- 1) Those Contractor employees designated as hourly reimbursable employees and their supervisors shall work solely on Department-identified and prioritized work under the contract, except with the prior approval of the Contracting Officer. These staff shall not be assigned to any Contractor business proposals, including the re-bid of the contract. The Contractor shall submit the names, resumes, and other required identifying information on each hourly reimbursable employee and their supervisors in the form and in the manner required by the Contracting Officer. The Contracting Officer must specifically approve each hourly reimbursable employee prior to that individual's assumption of his/her designated duties. Should any change occur in those individuals designated as hourly reimbursable employees due to the reassignment or transfer of the individual by the Contractor, the Contractor shall notify the Contracting Officer thirty (30) days prior to the change and shall submit all required information on a new, qualified nominee to assume the designated duties at the time of notification, unless the Contracting Officer grants additional time. Should the employee separate his/her employment with the Contractor without advance notice, the Contractor shall notify the Department of the change within three (3) days of notice from the employee to the Contractor. Any time worked by an employee without prior Department approval shall not be payable by the State.
- 2) Under no circumstances will the Contractor be paid for vacant positions, any leaves of absence including sick leave and vacation, or for work performed on functions not specifically authorized in the RFP, except as authorized by the Contracting Officer. Further, the Contractor shall utilize, and make available to the Department, an automated system that records all time that each hourly-reimbursed employee works specified by assigned activity. This data shall be automatically collected into the automated system and must have the capability to generate reports and provide electronic access to the Department, to view in a screen format, all hourly-reimbursed positions and employees. For each employee, the system shall automatically gather all

billable and non-billable hours by activity, as well as the employee's regular hours worked, leave of absence hours, and overtime hours. This automated system must also provide the capability to allow the Department to download the data and use this data by a commercial personal computer database and/or spreadsheet application. This automated system must be linked to the Contractor's payroll accounting system and each employee's hours (billable and non-billable hours must reconcile to the Contractor's payroll accounting system). By the tenth (10th) day of the month, following the month worked, the Contractor must utilize this system to provide the Department with monthly summary reports which summarize the number of hours by employee and overall time spent on each contract task/function.

The Contractor may choose to utilize an existing commercially available system or to develop its own system for this contract. If the Contractor elects to develop its own system, it will become part of CD-MMIS and will be subject to CD-MMIS standards and requirements.

- 3) Should the Contracting Officer find that an hourly reimbursable employee is failing to provide or perform the designated duties of his/her position in a manner that is acceptable to the Department, the Contracting Officer may, at his/her sole discretion, require the Contractor to provide the employee with specialized training to improve performance or production, transfer the employee from the special group or simply not allow payment for those hours. Should training be required, the Contractor shall submit a plan to provide such training within fourteen (14) calendar days of the formal request to the Contracting Officer for his/her review and approval. Should transfer be required, the Contractor shall comply within fourteen (14) calendar days of the request and, also, during that time, shall submit all required information on a new, qualified nominee to assume the designated duties. The Contracting Officer's discretionary power to require additional training or to require transfer of an hourly reimbursable employee will not be unreasonably exercised nor will his/her approval be unreasonably withheld.

B. Published List of Key Personnel

The Contractor shall provide the Contracting Officer with a monthly updated list of direct phone numbers for senior management, Dental Consultant staff and key personnel. The phone list shall include, but not be limited to, the employees in all functional areas described in Exhibit A, Attachments I through IV, Scope of Work.

14. Contractor Responsibilities - General

The Contractor shall cooperate fully with any other contractors that may be engaged by the Department to work on CD-MMIS-related activities.

The Contractor shall cooperate with the Department and any law enforcement authorities in the investigation and documentation of possible fraud and abuse cases or any other possible misconduct related to the Contractor's responsibilities and performance under the contract.

Two (2) weeks after contract approval by the Department of General Services, the Contractor shall provide to the Contracting Officer an additional forty (40) sets (one (1) or more volumes) of the updated technical proposal and any clarifications or corrections thereto submitted during the evaluation phase in printed format, and one (1) set (one (1) or more volumes) of evaluation phase on diskette or CD-ROM. Each set of the technical proposal shall be submitted as a complete unit.

The Contractor shall cooperate with the Department, to the extent required by the Contracting Officer, in reproducing the contract.

15. Media Releases

The Contractor shall make a review of any information, promotional materials, media release, or advertising proposed to be released by it, or any subcontractor, prior to release. The Contractor's review shall insure at least, but not be limited to, the accuracy of terminology, numerical totals, and statistical conclusions. The Contractor or any subcontractor, without the prior written approval of the Contracting Officer, shall make no release. This Provision shall apply to any release that relates to the contract, Contractor's performance under the contract, any aspect of dental services or payment by the Department, or the Medi-Cal program.

16. Computer Media Claims (CMC) Equipment

The Department owns the equipment and redundant backup equipment currently being used for CMC. The Contractor can use this equipment or propose another solution that meets the contract requirements. If the Contractor chooses to use the existing equipment, the Contractor will be responsible for the maintenance and necessary upgrades to meet the contractual requirements.

In the event that the Contractor proposes another solution, the Contractor shall include in its proposal, one hundred percent (100%) redundant lines and hardware as part of the bid price for Takeover.

17. Required Licensure

The Contractor shall be licensed by the Department of Managed Health Care (DMHC) under the Knox-Keene Health Care Service Plan Act of 1975 (Health and Safety Code Section 1343 et seq.) and Regulations (Title 10, CCR, Chapter 3). If not already licensed, the Contractor shall, prior to execution of this contract, file an application with the DMHC for such licensure. Proof of application for licensure shall

be submitted to the Department prior to contract execution. Proof of licensure shall be submitted to Department by the first day of assumption of Claims processing.

18. Liability for Overpayment

The Contractor is liable to the Department for unrecoverable overpayments and any associated administrative expenses. Unrecoverable overpayments are erroneous payments caused by the Contractor where the Department and the Contractor are unable to collect. Below are examples of what the Department considers unrecoverable overpayments:

- E. Erroneous payment whereby the overpayment cannot be collected from the provider due to the Contractor's negligence or inaction;
- F. Erroneous payment for claims paid to a provider who was inappropriately enrolled in the Medi-Cal Dental Program;
- G. Erroneous payments caused by the Contractor where the Department and the Contractor are unable to collect from the provider; and
- H. Those erroneous payments for claims processed when a beneficiary's eligibility would preclude reimbursement for services through CD-MMIS, e.g., the beneficiary is enrolled in a dental managed care plan.

19. Change Orders

This Provision shall apply in cases where the Department alters the work required or reallocates functions within the general scope of the contract, resulting in a change in Contractor's responsibilities as defined in Exhibit E, Additional Provision 19.A, below. Change Orders will be utilized in cases where an adjustment is needed to Contractor scope of work/payment.

A. Change In Contractor Responsibilities

The Contractor's bid prices will remain in effect for required work through the end of the contract. In the event that the Department alters the work required or reallocates functions within the general scope of the contract, which the Department in its sole discretion may do at any time during the term of the contract and thereby causes a documentable increase or decrease in the required effort of the Contractor, such action by the Department shall be taken through a Change Order. (As used in this Provision, "documentable" means that there is quantitative evidence available (beyond mere speculation) to support the proposition that there is an "increase or decrease.")

- 1) The following eight (8) conditions will not be justification for adjustment to the bid prices:

- a) The change in status (OFF/ON/TEST) of CD-MMIS edits/audits;
 - b) Implementation of new edits/audits or refinement to existing edits/audits which enhances or clarifies the application of Medi-Cal policy or billing procedures in existence on the date of issuance of the RFP;
 - c) Implementation by the Contractor of Dental Operating Instruction Letters (DOILs) or other changes which would normally be made as part of the Contractor's responsibility;
 - d) Central Processing Unit (CPU) and other machine time required due to the restructuring of existing files, or the addition of new files, reports or programs, unless said restructuring is solely the addition of capabilities beyond that originally required in the Contract. (Special reports developed by the Department or the Contractor or copying of files not required in the contract will be paid on an hourly reimbursement basis.)
 - e) Execution of a contract responsibility for which the Contractor is already receiving reimbursement;
 - f) Changes in claims/TAR volumes, and other applicable volumes;
 - g) Design, development, installation, maintenance, or other activities defined in the contract as part of the Contractual Responsibilities; and
 - h) Additional Contractor Services (ACS) proposed by the Contractor.
- 2) In determining whether a price revision is necessary, consideration shall first (1st) be given to:
- a) Whether this effort has been offset by the implementation of cost reduction changes initiated by either the Contractor or the Department as described in Exhibit E, Additional Provision 20, Opportunities for Reduction in Operations Costs; and
 - b) Whether there are alternate means for implementing the change or whether there are resources being used elsewhere which can be made available for the change.

If the total cost for the adjustment exceeds the saving of the actions listed in (a) and (b), above, the Change Order process shall be utilized to compensate for the increased cost, plus overhead and profit.

B. Change Orders Implementation

This Provision is intended for use in the case of a change in Contractor Responsibilities. If a change in Contractor Responsibilities is proposed, the Contracting Officer shall issue a Change Order and specify the date of implementation, subject to Exhibit E, Additional Provision 19.D, Contractor-Initiated Change Orders.

C. Change Order - Contractor Requirements

All terms and conditions of the contract shall apply to each Change Order, unless specifically modified by that Change Order.

The Contractor shall provide to the Contracting Officer within thirty (30) days of receipt of the Change Order, a written statement that:

- 1) The change has no price impact on the Contractor; or
- 2) There is a price impact, in which case the statement shall include a completed cost pricing form (see Exhibit E - Attachment II for the sample Change Order Pricing Proposal Form) for each phase of the change including design and development, if not done by the Systems Group and Operations. In addition, the Contractor shall submit with this form any information required to explain the Contractor's estimating process, including:
 - a) The judgmental factors applied, and the mathematical or other methods used in the estimate, including those used in projecting from known data;
 - b) The assumptions used by the Contractor in developing the proposed price;
 - c) The methodology and justification for the calculation for general and administrative expenses, overhead costs and allocations, and profits, including the date of the data used for this calculation;
 - d) A work plan meeting the contracted requirements for work plans; and
 - e) A separate itemization of items to be paid by cost reimbursement.

The Department shall negotiate with the Contractor to reach agreement on Change Orders. In cases where additional information is required, the

Contractor shall provide needed information within ten (10) days of request. After the parties reach an agreement, the contract terms shall be modified accordingly. If the parties are unable to reach an agreement, the Contracting Officer shall order the implementation of the Change Order and make a determination of the revised prices. The Contractor shall proceed with the work as thus changed, subject to the Contractor's right to dispute the Contracting Officer's determination of the price pursuant to Exhibit E, Additional Provision 23, Disputes and Appeals.

D. Contractor- Initiated Change Orders

The Contractor shall not institute any modification to its procedures, operations, or organization that would directly or indirectly increase the cost to the Department without first (1st):

- 1) Submitting a written statement of the type described in Exhibit E, Additional Provision 19.C., Change Order – Contractor Requirements, and
- 2) Receiving approval in writing from the Contracting Officer to institute the modification.

E. Change Order Approvals

- 1) All increased costs of performance attributable to said modification incurred prior to receipt of such written approval as set forth above shall be unallowable.
- 2) Any single Change Order must be approved by the Department of General Services and the Department of Finance if the change order:
 - a) Costs the State in excess of seventy-five thousand dollars (\$75,000) for design, development, and installation (excluding Systems Group changes); or
 - b) Increases the operations by greater than either seventy-five thousand dollars (\$75,000) for one (1)-time costs.
- 3) The Department of Finance review may also require a thirty (30)-day notice to the Legislature before approval.
- 4) If the Change Order causes a one (1)-time cost to the State greater than two hundred and fifty thousand dollars (\$250,000), then it shall be subject to review by the California State Legislature.
- 5) Change Orders shall be subject to CMS review requirements.

20. Opportunities for Reduction in Operations Costs

A. General

- 1) The Contractor is encouraged to develop, prepare, and submit cost reduction change proposals voluntarily. As provided in this Provision, the Contractor shall share in net contract savings realized from accepted cost reduction change proposals.
- 2) Cost reduction change proposals related to services under the fixed price portion of the contract must be approved by the Contractor prior to implementation under the Change Order process set forth in Exhibit E, Additional Provision 19, Change Orders. The Contractor shall not implement any cost reduction action that would constitute a change in Contractor responsibilities under Additional Provision 19.D., Contractor- Initiated Change Orders, without first having complied with the provisions of this Exhibit E, Additional Provision 20. (See also Exhibit E, Additional Provision 22, Waiver of Contract Provisions.)
- 3) Notwithstanding the provisions of Exhibit B-Attachment I, Special Payment Provisions, of this contract, relating to payment of cost reimbursement services under the contract, the State will share the savings resulting from the implementation of cost reduction change proposals relating to cost reimbursement services with the Contractor. The purpose of this provision is to provide an incentive for the Contractor to make changes that will reduce costs, even in activities where its costs are reimbursed.

B. Definitions

- 1) Cost reduction change proposal means a proposal that:
 - a) In connection with services under the fixed price portion of the contract, requires a Change Order under the contract to implement; or
 - b) In connection with services subject to cost reimbursement, has been approved by the Contracting Officer; and in either case,
 - c) Results in reducing the overall projected cost to the State without impairing the Contractor's performance of its duties and responsibilities under the contract.
- 2) Net Contract Savings, as used in this Provision, means contract savings, less State costs.

- 3) Contract savings, as used in this Provision, are the net cost reductions to the contract, and are equal to cost reductions effected by the cost reduction change proposal (calculated in accordance with this Provision) less the Contractor's allowable development and implementation costs.
- 4) Department costs, as used in this Provision, means those State costs that result directly from developing and implementing the cost reduction change proposal, such as any net increases in the cost of testing, operations, maintenance, and logistics support. The term does not include the normal administrative costs of processing the cost reduction change proposal.
- 5) Contractor's development and implementation costs, as used in this Provision, means those costs the Contractor incurs on a cost reduction change proposal specifically in developing, testing, preparing, and submitting the cost reduction change proposal, as well as those costs the Contractor incurs to make the contractual changes required by the Department's acceptance of a cost reduction change proposal.
- 6) Sharing period, as used in this Provision, means the period beginning with acceptance of the cost reduction change proposal and ending when the term of the contract ends pursuant to Exhibit E, Additional Provision 8, Term of Contract.

C. Cost reduction change proposal preparation

At a minimum, the Contractor shall include in each cost reduction change proposal the information described below:

- 1) Identification of the specific costs that are reduced as a result of the cost reduction change proposal. This will require that the Contractor document the current cost incurred by the State and the savings resulting from implementation of the cost reduction change proposal.
- 2) A description of the difference between the existing contract requirement and the proposed requirement, the comparative advantages and disadvantages of each, a justification when a function or characteristic under the contract is being altered, and the effect of the change on the Contractor's performance;
- 3) A list and analysis of the contract requirements that must be changed if the cost reduction change proposal is accepted, including any suggested specification revisions;
- 4) Identification of the contract services to which the cost reduction change proposal applies;

- 5) A separate, detailed cost estimate for one (1) the affected portions of the existing contract requirement and two (2) the cost reduction change proposal. The cost reduction associated with the cost reduction change proposal shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts.
- 6) A description and estimate of costs the State may incur in implementing the cost reduction change proposal, such as test and evaluation and operating and support costs;
- 7) A statement of the time by which a contract modification accepting the cost reduction change proposal must be issued in order to achieve the maximum cost reduction, noting any effect on the times for performance specified in the contract; and
- 8) Identification of any previous submissions of the cost reduction change proposal, including the dates submitted, and previous actions by the Department, if known.

D. Submission

The Contractor shall submit cost reduction change proposals to the Contracting Officer.

E. Action by the Department

- 1) The Contracting Officer shall notify the Contractor of the status of the cost reduction change proposal within forty-five (45) calendar days after the Contracting Officer receives it. If additional time is required, the Contracting Officer shall notify the Contractor within the forty-five (45) day period and provide the reason for the delay and the expected date of the decision. The Department will process cost reduction change proposals expeditiously; however, it shall not be liable for any delay in acting upon a cost reduction change proposal. The Contracting Officer may request additional information that he/she believes would be helpful in evaluating the proposal.
- 2) If the cost reduction change proposal is not accepted, the Contracting Officer shall notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any cost reduction change proposal, in whole or in part, at any time before the Department accepts it. Prior to acceptance, the Contracting Officer may require that the Contractor provide written notification before it undertakes significant expenditures for the cost reduction change proposal development effort.
- 3) Any cost reduction change proposal related to services under the fixed price portion of the contract may be accepted, in whole or in part, by the

Contracting Officer's approval of a Change Order under Exhibit E, Additional Provision 19.D Contractor – Initiated Change Orders, citing this Provision 21, Notification of Claims. Until such a Change Order applies a cost reduction change proposal to the contract, the Contractor shall perform in accordance with the existing contract.

- 4) Any cost reduction Change Proposal related to services subject to cost reimbursement may be accepted, in whole or in part, by the Contractor's written approval in accordance with Exhibit E, Additional Provision 11, Contract Communication.
- 5) The Contracting Officer's decision to accept or reject all or part of any cost reduction change proposal, and the decision as to which of the sharing rates applies, shall be final and not subject to Exhibit E, Additional Provision 23, Disputes and Appeals, or otherwise subject to litigation.

F. Sharing rates

If a cost reduction change proposal is accepted, the Contractor shall share in net contract savings according to the percentages set forth below.

- 1) Cost reduction change proposals under the fixed price portion of the contract:
 - a) Net contract savings shall be apportioned seventy-five percent (75%) to the contractor and twenty-five percent (25%) to the Department. The twenty-five percent (25%) savings shall be applied under Exhibit E, Additional Provision 19.A., Change Orders, or, if there are no offsetting changes, the apportioned savings will result in a reduction in contract prices.
 - b) If a cost reduction Change Proposal results from joint efforts on the part of the Department and the Contractor, the benefit of those improvements shall be proportionately shared between the parties, the proportioned shares to be determined through an agreement of the parties. In the event that an agreement on proportioned shares cannot be reached within six (6) months of the date the Department authorizes the change, the Department and the Contractor shall each share fifty percent (50%) of the benefits.
- 2) Cost reduction change proposals under the cost reimbursement portion of the contract::

Net Contract savings shall be apportioned between the State and the Contractor as follows:

Cumulative Savings	State Share	Contractor Share
\$5,000 - \$250,000	50%	50%
\$250,000 +	Percent apportionment negotiable, but shall not exceed 50% to the Contractor and shall not exceed a maximum of \$250,000 per improvement.	

- 3) For system improvements originated and paid for by the State which decrease the operating expenses or costs, or result in one-time decreased expenses or costs, and which are not utilized to offset changes under Exhibit E, Additional Provision 19.A., Change Orders, the financial benefits of those changes shall be one hundred percent (100%) to the State and will result in a reduction of the cost or price of the contract.

G. Calculating and documenting contract savings

- 1) State costs shall be offset against contract savings each time such savings are realized until they are fully offset. Then, the Contractor's share is calculated by multiplying net contract savings by the appropriate Contractor's percentage-sharing rate (see Exhibit E, Additional Provision 20. F. above). Additional Contractor shares of net contract savings shall be paid to the Contractor at the time realized, subject to Exhibit E, Additional Provision 20. H.
- 2) Documentation of contract savings is the responsibility of the Contractor and is subject to Contracting Officer review and approval prior to payment of the share-of-cost savings apportioned to the Contractor through the apportionment methodology described above. The Contractor will submit a monthly invoice with appropriate documentation to the Department. The Contracting Officer must approve the documentation submitted before payment of the invoice is made. For one (1)-time cost savings, the Contractor will submit a single invoice with appropriate documentation submitted before payment of the invoice is made.

H. Paying the net contract savings

The Contractor's development and implementation costs shall be paid by the Contractor as specified in this paragraph. The State will initially pay those Contractor's development and implementation costs which are cost reimbursable under Exhibit B-Attachment I, Special Payment Provisions, for cost reduction change proposals which have been accepted by the Contracting Officer. Such costs are then amortized over a twelve (12)-month period and shall offset the

Contractor's monthly share of savings for the first twelve (12) months following implementation of the improvement. Costs for cost reduction change proposals resulting in one (1)-time cost savings are not amortized. The Contractor share of the one (1)-time savings is billable at the time they are achieved, less costs reimbursable, which are required to implement the proposal.

I. Disputes and notification of proposal development

- 1) Disagreements regarding the calculation or payment of the Contractor's saving share, or other matters (except as provided in paragraph E. above) shall be subject to the provisions of Exhibit E, Additional Provision 21, Notification of Claims, as appropriate.
- 2) Per Exhibit E, Additional Provision 18, Liability for Overpayment, the Contractor shall share in cost savings directly in relation to its involvement in the detection and initiation of the cost reduction opportunity. In order to resolve Disputes as to which party initiated a cost reduction change proposal, the determination as to whether or not a cost reduction change proposal is Contractor-initiated or Department-initiated shall be based on the date that the Contracting Officer first receives written notification of the proposed change from either the Contractor or from Department sources. Notification shall, at a minimum, describe the proposal, the steps necessary to implement the proposal, and include an estimate of the costs and savings that are anticipated. General recommendations as to changes or improvements that could result in cost savings will not constitute notification. Notification from the Contractor shall be in accordance with the requirements of Exhibit E, Additional Provision 11, Contract Communication. Notification from State sources shall be transmitted to the Contracting Officer on official Department letterhead that has been dated and signed.

J. Other Provisions

- 1) At the sole option of the Contracting Officer, the Department may assume part of the Contractor's development and implementation costs.
- 2) In the event that the Contractor initiates the development, design, or implements changes or improvements in operations under the contract that do not fall within the scope of this Exhibit E, Additional Provision 20, Opportunities for Reduction in Operation Costs, the Contractor shall bear all costs.
- 3) Without limitation, this Exhibit E, Additional Provision 20, Opportunities for Reduction in Operation Costs, does not apply to Contractor implementation of Change Orders issued by the Contracting Officer in direct response to changes in federal or State statutes, regulations, or decisional law

subsequent to contract award. Any savings from these actions shall accrue one hundred percent (100%) to the State.

- 4) The United States Postal Service, telephone companies and long distance carriers (such as AT&T and Pacific Bell), and other public/private utilities may enact rate changes that reduce cost reimbursement expenses. This Exhibit E, Additional Provision 20, Opportunities for Reduction in Operation Costs, does not apply to such reductions and the Contractor shall not claim a share of the savings resulting from reduced rates from these utilities. Any savings from these rate reductions shall accrue one hundred percent (100%) to the State.

21. Notification of Claims

The purpose of this Provision is to obtain prompt reporting of Department conduct that the Contractor believes will result in, or require, a change to the contract.

A. Contractor's Notice

Except for Change Orders issued by the Contracting Officer in accordance with Exhibit E, Additional Provision 19, Change Orders, the Contractor shall promptly notify the Contracting Officer in writing of Department conduct (including actions, inactions, and written or oral communications) which it regards as directing or requiring a change in the contract terms and conditions. Notification shall be promptly given, but in no event to exceed fifteen (15) days from the date the Contractor is informed, or otherwise becomes aware, of such conduct.

B. Notice Information

The Contractor's notice shall be in a form prescribed by the Contracting Officer and shall state, on the basis of the most accurate information then available to the Contractor, the following:

- 1) The claim is made pursuant to this Exhibit E, Additional Provision 21, Notification of Claims;
- 2) The date, nature, and circumstances of the conduct regarded as a change;
- 3) The names, function, and activity of each individual, Contractor, subcontractor, Department official, or employee involved in or knowledgeable about said conduct;
- 4) The identification of any documents, and the substance of any oral communications involved in such conduct. Copies of all identified documents shall be attached;

- 5) The reason why the Contractor believes that the conduct justifies an adjustment to price or performance schedule elements of the contract; and
- 6) The particular elements of contract performance for which the Contractor is seeking an equitable adjustment under this clause, including:
 - a) The contract line item(s) that have been or may be affected by the alleged change;
 - b) The labor or materials or both that have been or may be added/deleted by the alleged change;
 - c) To the extent practicable, the delay and disruption, in the manner and sequence of performance and effect on continued performance, that have been or may be caused by the alleged change;
 - d) The adjustments to contract price, delivery schedule, and other provisions affected by the alleged change as estimated; and
 - e) The Contractor's estimate as to the date by which the Department must respond to the Contractor's notice in order to minimize cost, delay, or disruption of performance.

Following submission of the required notice, the Contractor shall continue performance of the contract (including matters identified in the notice).

C. Contracting Officer Decision

The Contracting Officer shall promptly, and in any case within thirty (30) days after the receipt of notice from the Contractor as provided for in this Exhibit E, Additional Provision 21, Notification of Claims, respond in writing. The Contracting Officer's response shall:

- 1) Indicate whether the conduct of which the Contractor gave notice constitutes a basis for adjustment to the price or performance schedule of the contract, and where necessary, direct the manner of further performance;
- 2) Countermand any action or communication earlier given relating to the conduct of which the Contractor gave notice;
- 3) Deny that the conduct of which the Contractor gave notice constitutes a basis for adjustment to the price or performance schedule of the contract, and where necessary direct the manner of further performance; or
- 4) If the information in the Contractor's notice is inadequate to permit a decision to be made under C.1), C.2), or C.3) above, advise the Contractor as to what

additional information is required, and establish how that information should be furnished. The Contractor shall have thirty (30) days to respond to the Contracting Officer's request for further information. Upon receipt of this additional information, the Contracting Officer shall have thirty (30) days to respond with a decision.

D. Notice Confirmation

- 1) If the Contracting Officer confirms that the conduct provides a basis for an adjustment in the contract price or performance schedule of the contract, or both, the Contracting Officer shall issue a written Change Order and the parties shall proceed in accordance with Exhibit E, Additional Provision 19, Change Orders. Any payment adjustment shall be computed as of the date of the Notification of Claim, or upon date of delivery of additional information pursuant to Exhibit E, Additional Provision 21.C., Notification of Claims, Contracting Officer Decision above.
- 2) If the Contracting Officer denies that the conduct constitutes a basis for an adjustment in price or performance schedule, the Contracting Officer shall issue a final decision to this effect and the Contractor may proceed in accordance with the Exhibit E, Additional Provision 23, Disputes and Appeals. The above "final decision" is final and conclusive, unless a Notice of Appeal is timely filed.

E. Contractor Waiver

If the Contractor fails to submit a notice in the manner and within the time specified in this Exhibit E, Additional Provision 21, Notification of Claims, such failure shall constitute a waiver by the Contractor of all claims arising out of said conduct, whether direct or consequential in nature, and the Contractor shall not have any appeal rights, either under this contract or at law or equity, on such claims.

F. Unsupported Claims

If the Contractor is unable to support any part of its claim and it is determined that such inability is attributable to misrepresentation of fact or fraud, including failure to provide sufficient information known to the Contractor, the Contractor shall be liable to the State for all cost attributable to the cost of reviewing said part of the claim.

22. Waiver of Contract Provisions

- A. No covenant, condition, duty, obligation, or undertaking contained in or made a part of the contract shall be waived except by written agreement of the parties, or by the explicit language found in the contract. Forbearance or indulgence in any

other form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the party to which the same may apply; and until complete performance or satisfaction is achieved for all such covenants, conditions, duties, obligations and undertakings, the other party shall have the right to invoke any remedy available under the contract or under law or equity, notwithstanding any such forbearance or indulgence.

- B. Proposed waivers must be initiated by the Contractor in a written Contract Waiver Request signed by the Contractor Representative. A Contract Waiver Request shall contain either:
- 1) Certified cost and pricing data covering either the costs or cost savings attributable to the requested waiver;
 - 2) A certified statement that this waiver results in neither an increase in cost nor any cost savings; or
 - 3) A certified statement that the costs or cost savings attributable to the change are less than the costs involved in preparing cost and pricing data in response to a Change Order, where the Change Order does not exceed ten thousand dollars (\$10,000).
- C. The Contracting Officer's approval of the Contract Waiver Request shall be in the form of a Contract Waiver Letter signed by the Contracting Officer and shall define the scope of the change. The Contracting Officer may require that the Contractor submit full documentation, including certified cost and pricing data, in support of any waiver authorized pursuant to this Provision. If there is a cost or cost savings to the State, that cost or cost savings shall be processed in a Change Order or utilized as an offset pursuant to Exhibit E, Additional Provision 19, Change Orders. A Waiver shall not exist unless approved by a Contract Waiver Letter.

23. Disputes and Appeals

A. Notification of Dispute

The Contractor shall meet all time requirements as set forth in Exhibit D(F), Special Terms and Conditions, of this contract, to notify the Department of any dispute, describing the conduct (including actions, inaction, and written or oral communication) which it is disputing.

The Contractor's notification shall state, on the basis of the most accurate information then available to the Contractor, the following:

- 1) It is a dispute pursuant to this Additional Provision 23;

- 2) The date, nature, and circumstances of the conduct which is the subject of the dispute;
- 3) The names, phone numbers, function, and activity of each Contractor, subcontractor, Department official or employee involved in or knowledgeable about such conduct;
- 4) The identification of any documents, and the substance of any oral communications involved in such conduct. Copies of all identified documents shall be attached;
- 5) The reasons why the Contractor is disputing the conduct;
- 6) The cost impact to the Contractor directly attributable to the alleged conduct, if any, including:
 - a) What contract line item(s) have been or may be affected by the alleged conduct;
 - b) What labor or materials or both have been or may be added/deleted by the alleged conduct;
 - c) To the extent practicable, what delay and disruption in the manner and sequence of performance, and effect on continued performance have been or may be caused by the alleged conduct; and
 - d) What adjustments to contract price, delivery schedule, and other provisions are required or have been or may be affected by the alleged conduct.
- 7) If no cost impact is involved, the Contractor's desired remedy.

Notwithstanding the submission of a Notification of Dispute, the Contractor shall diligently continue performance of the contract (including matters identified in the Notification of Dispute to the maximum extent possible).

B. Waiver Of Claims

If the Contractor fails to submit a Notification of Dispute, supporting and substantiating documentation, and/or any additionally required information in the manner, and within the time specified in Exhibit E, Additional Provision 23, Disputes and Appeals, such failure shall constitute a waiver by the Contractor of all claims arising out of said conduct, whether direct or consequential in nature, and the Contractor shall not have any further appeal rights, either under this contract or at law or equity on such claims.

24. State Ownership

- A. The State of California owns the CD-MMIS used by the Contractor or any subcontractor under the contract. The State's ownership rights shall extend, but not be limited, to:
- 1) All computer programs including all software, except as noted below, that have been or will be designed, developed, or installed for use in the contract by the Contractor or any other third party, including but not limited to any and all object codes and source codes; any software developed for claims or TAR processing; data editing and auditing; creating and maintaining program and data history; report generation; manual data entry; OCR; computer media billing; status reporting; resource management, including assessment of employee accuracy; quality control; and erroneous payment collection. This includes all software on mainframe, mini, personal or any other types of computers. The provisions of this paragraph do not apply to systems that relate solely to the Contractor's internal processes including but not limited to personnel, budget, or accounting processes. The provisions do apply to any software related to the administration of the CD-MMIS.
All data files and form designs;
 - 2) All user and operation manuals and other documentation, including but not limited to examiner manuals, claims processing manuals, reports generated by the Contractor, Medi-Cal policy manuals, and financial accounts manuals; and
 - 3) All software and hardware that were purchased by the Department through cost reimbursement.
- B. All Contractor-proposed computer software for the performance of the contract, wherein the Contractor is unable to transfer proprietary rights to the State because it does not hold such proprietary rights, must meet one (1) of the following conditions:
- 1) Available in the public domain;
 - 2) Available at established catalog or market prices and licensed or sold to the general public in substantial quantities. An "established catalog or market price" must be printed, published, regularly maintained, current, readily available to a wide number of commercial customers, and a large number of the listed items are actually being sold at the listed prices. "Sold in substantial quantities," means that the items in the commercial catalog or price list must actually be sold in large enough quantities to show that customers are actually paying those prices. To verify this, the Contractor shall assure that the company has a reasonable sales volume for its size and that prices listed are comparable to those shown in the price lists of other

companies in the same business. The sales to the general public shall account for at least fifty percent (50%) of the company's total sales and, at least seventy-five percent (75%) of the sales to the general public shall be at the catalog prices; and

- 3) Otherwise approved by the Contracting Officer prior to its use under the contract.
- C. All licenses are to be obtained in the Contractor's name but must include an option for transferability either to a subsequent Contractor or to the State. Where a license cannot be re-licensed or transferred, the Contractor shall, if requested by the Contracting Officer, assist the State in obtaining a license of its own.
- D. All software shall be designed to run on hardware that is sold to the general public in substantial quantities.
- E. The Contractor shall not contract with any outside organization for the purpose of processing claims, TARs, or any of the activities listed in Exhibit E, Additional Provision 22, Waiver of Contract Provisions, using the CD-MMIS without prior written approval of the Contracting Officer. If the Department agrees to license the CD-MMIS for such purposes, the Contractor will pay an appropriate license fee to the State for such use. The Contracting Officer will set the fee at a reasonable market price. If such license is approved, the costs associated with integrating the process into the CD-MMIS will be borne one hundred percent (100%) by the Contractor and will follow all SDN documentation and approval processes unless the Contracting Officer has previously approved alternative documentation and approval processes in writing.
- F. The State of California owns all documents, communication, and materials received by the Contractor from providers and beneficiaries; all documents, materials, and reports generated through CD-MMIS processing; and all documents, materials, and reports produced by the Contractor from any information, communication, or material received from the Department.
- G. The provisions of this article shall be incorporated in any subcontract that relates to the subject matter of this article.

25. Authority of the Department

Sole authority to establish, define, or determine the reasonableness, the necessity and the level and scope of covered benefits under the dental programs administered in the contract, coverage for such benefits, the eligibility of beneficiaries or providers to participate in the dental program, any aspect of reimbursement to providers, or the operation of the CD-MMIS, shall reside with the Department.

Sole authority to establish or interpret policy and its application related to the above areas shall reside with the Department.

The Contractor may not make any limitations or changes in the benefits or coverage for benefits; any changes in definition or interpretation of benefits; any manual or automated actions which change the resolution of claims failing edits/audits from that approved by the Department; or any changes in any other aspect of the administration of the dental program related to the scope of benefits, allowable coverage for those benefits, the eligibility of beneficiaries or providers to participate in the dental program, the reimbursement of providers, or the operation of the CD-MMIS, except for emergency fixes, without written direction or approval of the Contracting Officer.

26. Health Insurance Portability and Accountability (HIPAA)

While performing the requirements set forth in the Exhibit A, Attachments I through IV, Scope of Work, the Contractor and subcontractor(s) shall be responsible for taking into account the requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 (reference Public Law 104-191, dated August 21, 1996), as described in Exhibit H, HIPAA Business Associate Addendum.

27. Subcontracts and Cost Reimbursable Purchases

In addition to Exhibit D(F), Special Terms and Conditions, Provision 5, relating to Subcontracts, the Contractor shall abide by the following requirements:

- A. As used in the contract, the term "subcontractor" shall include any individual or entity, whether or not affiliated with the Contractor, which enters into a subcontract with the Contractor, or any other subcontractor.
- B. A subcontract as used in the contract means any contract which is a mutually binding legal relationship obligating the seller to furnish supplies, funds or services (including construction) and the Contractor to provide consideration for them. It also includes any type of commitment that may obligate the Department or the State to an expenditure of appropriated funds and that, except as otherwise authorized, is in writing. In addition to bilateral agreements, contracts for purposes of this Provision include, but are not limited to awards and notices of award; job orders; ordering agreements; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance, including changes and/or modifications to purchase orders; and bilateral contract modifications entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.
 - 1) Unless precluded by other provisions of the contract, the Contractor may enter into subcontract(s) for performance of various functions under the contract. All subcontracts pursuant to the contract shall be in writing.

- 2) The Department shall approve all subcontracts in advance, unless the need for such approval is specifically waived by the Contracting Officer in advance and in writing. In the event of a waiver, the Department shall continue to have access, within two (2) State workdays of the contracting officer's request, to all related documentation, including the subcontract itself. Existing subcontracts that the Contractor proposes to use for performance of any of its functions under the contract, shall be subject to the prior approval provisions of this paragraph.
- 3) No subcontract that the Contractor enters into shall in any way relieve the Contractor of any responsibility for performance of its contract duties.
- 4) The Contractor shall be held responsible for a subcontractor's actions, or for its failure to take required actions, in regards to fulfilling the requirements of the contract. Should the Department or the State suffer damages due to the actions, or to the inactions, of a subcontractor, the Department shall be entitled to seek remedy from the Contractor for the situation either through the liquidated damages provisions of the contract or through any other recourse available to it under the contract or under the law. Furthermore, the Department may require that the Contractor review selected subcontractors and/or require that the Contractor add conditions to the subcontractor's contract.
- 5) For any subcontractor accepted as a part of the Contractor's Technical Proposal, the subcontract shall specify that the subcontractor may not terminate or change its relationship to the Contractor without prior written approval of the Contractor. Such approval by the Contractor shall not be granted unless the Contractor receives prior written approval of the Contracting Officer regarding the termination or change in relationship. The Contractor shall not terminate a subcontract or alter the working relationship between the Contractor and a subcontractor accepted as a part of the Contractor's Technical Proposal, without the prior written approval of the Contracting Officer.
- 6) The Contractor shall develop and maintain backup plans that shall be put into effect at the Contracting Officer's direction in the event of a default on the part of a subcontractor designated to perform work as a part of the Contractor's Technical Proposal. The Contracting Officer may require that such plans be periodically updated so as to ensure a smooth transition to designated backup resources with no disruption of contractually required activities.
- 7) The Contractor shall give the Contracting Officer immediate notice in writing of any action or lawsuit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that may result in litigation

related in any way to the contract or to the Contractor's performance under it.

- 8) Before the Contracting Officer will consider whether to approve any subcontract for telephone services, the Contractor shall be required to fully inform the Contracting Officer of any products offered by the subcontractor that involve members of the public being charged for dialing a number where a recorded message or a "live" presentation is made over the phone.
- 9) The Contractor shall secure at least three (3) written, competitive quotations for all subcontracts and purchases of ten thousand dollars (\$10,000) or more that are subject to the cost reimbursement and/or change order provisions of the contract. In the case of purchases or subcontracts in excess of one thousand dollars (\$1,000) but less than ten thousand dollars (\$10,000), the Contractor may seek Contracting Officer approval to purchase or subcontract without obtaining three competitive quotations. The Contractor must obtain the Contracting Officer's approval in writing prior to finalizing the subcontract or the purchase; otherwise, three (3) quotations shall be obtained as provided above. Purchases or subcontracts for less than one thousand dollars (\$1,000) are exempt from the provisions of this paragraph. Additionally, the Department may, at its sole option, process the subcontracts or purchases described in this paragraph through the State's procurement procedures.
- 10) If competitive quotations are received and the Contractor decides to enter into the subcontract or the purchase with an entity other than the one (1) that submitted the quotation for the least amount of money, the Contracting Officer must approve such decision prior to finalization of the subcontract or the purchase.
- 11) In all instances where the Contractor has received written competitive quotations, these shall be made available to the Contracting Officer upon his/her request. Purchase orders for public utility services and postage at rates established for the general public are not included in this requirement. Subcontracts subject to the cost reimbursement provisions of the contract shall not provide for payment on a cost-plus-a-percentage-of-cost basis. Subcontracts or purchases subject to cost reimbursement by the Department shall be payable at reasonable cost. A cost is reasonable if, by its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of a competitive business.
- 12) No changes shall be made to subcontracts wherein services are provided directly or indirectly to the State, without prior approval from the Contracting Officer.

- 13) The Contractor shall provide to the Department, within twenty-four (24) hours of request, a complete copy of any subcontract, including addenda, amendments, and attachments.

28. Affiliates

For purposes of this Provision, business concerns are affiliates of each other when, either directly or indirectly:

- 1) One (1) concern controls or has the power to control the other;
- 2) A third (3rd) party controls or has the power to control both; or,
- 3) Senior management, as defined in Exhibit E, Additional Provision 12, Contractor and Subcontractor Employees, has the power to control both.

Information regarding affiliates of the Contractor as defined above, shall be submitted to the Contracting Officer as part of their Technical Proposal and no less often thereafter than annually, unless a change to previously submitted information has occurred, in which case the Contractor shall have ten (10) calendar days to notify the Contracting Officer in writing. The information submitted shall include: the names and addresses of all affiliates of the Contractor; the names and addresses of all persons and concerns exercising control or ownership of the Contractor and any or all of its affiliates, and whether they exercise such control or ownership as common officers, directors, stockholders holding controlling interest, or otherwise.

29. Indemnification by Contractor

The Contractor shall indemnify the State for any claims and losses experienced by the Department, including the payment of claims resulting from a court order in which the Contractor has failed to perform its contractual obligation to provide an expert witness in court as specified in this contract.

The Contractor shall reimburse the State for any Contractor-caused penalty assessments against the State pursuant to Government Code Section 926.15 and for any Contractor-caused interest payment assessments against the State pursuant to Welfare and Institutions Code Section 14171.

In the event of a conflict between the provisions of paragraph one (1) on Page one (1) of Exhibit A, Scope of Work, and this Exhibit E, Additional Provision 29, Indemnification by Contractor, or where this Additional Provision 29 is more comprehensive, the provisions of this Additional Provision 29 shall govern.

30. Patent or Copyright Trademark and Trade Secret Infringement

The Contractor represents and warrants that no program, process, composition, writing, equipment, appliance or device, or any trademark, service mark, logo, idea, or any other work or invention of any nature or any other tangible or intangible property whatsoever developed, provided, or used by the Contractor (other than provided or used by the Department or another Contractor at the Department's request) in connection with its performance under this contract, infringes or will infringe any patent, copyright, trademark or other service mark of any other person, or is or will be a trade secret of any other person.

In the event a claim of infringement is brought against the Department because of the work performed by the Contractor, this Exhibit E, Additional Provision 30, Patent or Copyright Trademark and Trade Secret Infringement, will apply. The Department will inform the Contractor as soon as practicable of the claim or action alleging such infringement and shall give the Contractor the full opportunity to participate in the response thereto and the defense thereof, including without limitation, any agreement relating to the settlement thereof pertaining only to the rights of the Contractor.

31. Insurance and Bonding

This Provision sets forth the requirements for insurance and fidelity bonding under the contract.

As used in this Provision, a third (3rd) party carrier means an insurance company and/or bonding company licensed to provide the required lines in the State of California and in the amounts required by the contract.

A. Insurance

- 1) Evidence of the insurance coverage required by paragraph three (3) below must be submitted to the Contracting Officer prior to the contract effective date.
- 2) If the required insurance is not to be provided by a third (3rd) party carrier, the Contracting Officer must approve, in writing, any proposed alternative coverage prior to its use under the contract. Any request to use coverage other than standard insurance from a third (3rd)-party carrier must be submitted to the Contracting Officer in writing within ten (10) days after the notice of intent to award the contract. The request shall clearly and fully set out the arrangements proposed and how such arrangements will fully comply with contract requirements. If this request is not approved by the Contracting Officer, required insurance and bonding from a third (3rd) party carrier must

be obtained and evidence of coverage submitted to the Department within fifteen (15) days of the denial of approval.

- 3) The Contractor shall provide and maintain, and shall require its subcontractors to provide and maintain, the following insurance during the term of the contract:
 - a) Worker's Compensation Insurance in accordance with the statutory requirements of the state where work is performed; and
 - b) Comprehensive General and Automobile Liability insurance with minimum limits of five million dollars (\$5,000,000) per occurrence for bodily injury and property damage liability combined.
- 4) The State of California shall be named as an additional insured on the policy of insurance, with the exception of the Worker's Compensation Insurance, but only insofar as the activities of the contract are concerned. The Department will not be responsible for any premiums or assessments on the policy or policies.
- 5) The certificate of insurance must include the following provisions:
 - a) The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to the Department;
 - b) The State of California, its officers, agents, employees, and servants are included as additional insured, but only insofar as the operations under this contract are concerned; and
 - c) The Department will be notified of any failure by the Contractor to pay premiums, or any other change in the status or scope of the required coverage.
- 6) Contractor agrees that the above insurance shall be in effect at all times during the life of this contract. In the event said insurance coverage expires at any time during the term of the contract, Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the contract, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of the Department.

B. Bonding

- 1) Evidence of the fidelity bond or other security required by paragraph three (3) below must be submitted to the Contracting Officer prior to the contract effective date.
- 2) If the required bonding is not to be provided by a third (3rd)-party carrier, the Contracting Officer must approve, in writing, any proposed alternative coverage prior to its use under the contract. Any request to use coverage other than standard insurance from a third (3rd)-party carrier must be submitted to the Contracting Officer in writing within ten (10) days after the notice of intent to award the contract. The request shall clearly and fully set out the arrangements proposed and how such arrangements will fully comply with the contract requirements. If this request is not approved by the Contracting Officer, required insurance and bonding from a third (3rd)-party carrier must be obtained and evidence of coverage submitted to the Department within fifteen (15) days of the denial of approval.
- 3) A fidelity bond or other security shall be maintained by the Contractor and subcontractors for at least one million dollars (\$1,000,000) per loss covering every employee except those classifications of employees as the Contracting Officer may exempt upon proper justification and request by the Contractor. The fidelity bond or other security shall be maintained by the Contractor and subcontractors in a form satisfactory to the Department and must include the following conditions:
 - a) Loss, if any, under the bond shall be payable to the State of California;
 - b) Any bond shall provide for thirty (30) days prior written notice to the Department of intent to cancel or to make any other change, including, but not limited to the status, coverage or scope of the required bond or of the Contractor's failure to pay premiums;
 - c) The Department shall not be responsible for any premiums or assessments on the policy;
 - d) The policy shall not provide exclusions for the acts of officers.

32. Cost or Pricing

Notwithstanding the provisions in the Federal Acquisition Regulation (FAR) dealing with dollar limitations for cost and pricing data, the Contractor shall submit, and shall require subcontractors to submit, cost or pricing data in accordance with Title 48, Code of Federal Regulations, Subpart 15.804-6. Such cost or pricing data shall be submitted on the Change Order Pricing Proposal Form, Exhibit E-Attachment II.

- A. Except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public or the price as set by law or regulation as these terms are defined in Title 48, Code of Federal Regulations, Subpart 15.804-3 and in the contract, cost or pricing data shall be submitted under the following circumstances:
- 1) Prior to the award of any subcontract the total amount of which is expected to exceed one hundred thousand dollars (\$100,000) when entered into;
 - 2) Prior to the execution of any modification, extension or renewal of any contract, subcontract or change order which involves aggregate increases or decreases in cost plus applicable profits which are expected to exceed one hundred thousand dollars (\$100,000) over the contract or subcontract term; or
 - 3) Prior to the approval of any Change Order or cost reimbursable subcontract in excess of ten thousand dollars (\$10,000).
- B. Notwithstanding the exceptions set forth above, the Contracting Officer may at his/her option require cost or pricing data should it be his/her determination that to do so is in the best interests of the State.
- C. The Contractor shall maintain records of purchases made which identify the actual cost paid for items/services. In all cost reimbursable areas, the Contractor shall conduct itself as a prudent purchaser in a competitive marketplace.
- D. The Contractor shall certify (and shall require subcontractors to certify) to the State that to the best of its knowledge and belief, the cost or pricing data submitted under this Provision is accurate, complete, and current as of the date of its submittal.
- E. The Contractor shall insert the substance of this Exhibit E, Additional Provision 32, Cost or Pricing, including this paragraph, in each subcontract hereunder, be it cost reimbursable or non-cost reimbursable, which is expected when entered into to exceed ten thousand dollars (\$10,000) over its term, except when the price thereof is based on adequate price competition, established catalog or market prices on commercial items sold in substantial quantities to the general public, or prices as set by law or regulation.
- F. If the Contracting Officer determines that any price, including profit or fee, in any agreement, including, but not limited to, the contract; any subcontract to the contract; and/or any change order or waiver to the contract, established or negotiated in connection with the contract, or any cost reimbursable purchase, item, service or subcontract under this agreement was increased by any significant sums because the Contractor or any subcontractor furnished

incomplete or inaccurate cost or pricing data, then such price or cost shall be reduced accordingly by the amount of any excess cost.

- G. Further, the given pricing agreement, including the Contract; any subcontract to the contract; and/or any change order or waiver to the contract, shall be modified in writing to reflect the reduction described in the preceding paragraph. Failure to agree on a reduction shall be a Dispute concerning a question of fact within the meaning of Disputes as defined in Exhibit D(F), Special Terms and Conditions, Provision 15.

Because any given pricing agreement may be subject to reduction under this Provision by reason of incomplete or inaccurate cost or pricing data submitted in connection with certain subcontracts, the Contractor shall include a clause in each subcontract requiring the subcontractor to indemnify the Contractor as appropriate

33. Contractor Certifications

With respect to any report, invoice, record, paper, document, book of account, or other contract-required data submitted to the Contracting Officer in support of an invoice or document submitted to meet contract requirements, including, but not limited to, proof of insurance and bonding, Lobbying Certifications and Disclosures, Conflict of Interest Disclosure Statements and/or Conflict of Interest Avoidance Plans, pursuant to the requirements of the contract, the Contractor Representative or his/her designee shall certify that the report, invoice, record, paper, document, book of account or other contract-required data is current, accurate, complete and in full compliance with legal and contractual requirements to the best of that individual's knowledge and belief, unless the requirement for such certification is expressly waived by the Contracting Officer in writing.

Where in the contract there is a requirement that the Contractor "certify" or submit a "certification", such certification shall be in the form of an affidavit or declaration under penalty of perjury, dated and signed by the Contractor Representative or his/her designee.

34. Letter of Credit

The Contractor shall procure and maintain for the life of the contract, a five million dollar (\$5,000,000) irrevocable and unconditional Letter of Credit to secure the State against nonperformance by the Contractor. Said Letter of Credit shall be available to the Department two (2) weeks after contract effective date. The Contractor shall notify the Contracting Officer in advance if it is contemplating changing the financial institution that issued the Letter of Credit. The new Letter of Credit, which shall meet all required conditions applied to the first (1st), shall be transmitted to the Contracting Officer before the existing Letter of Credit expires and be effective on or before the date of expiration of the existing Letter of Credit.

35. Guaranty Provisions

If the Contractor is a subsidiary of a corporation or other legal entity, the full and prompt performance of all covenants, terms and conditions, and agreements resulting from this RFP for the term of the contract shall be guaranteed by that entity in the Contractor's chain of ownership which is publicly traded. This entity shall be known as the Contractor's parent corporation for purposes of the contract.

The guaranty shall, at a minimum:

- A. Be made to the Department;
- B. Be signed by an official authorized to bind the guarantor organization;
- C. Accept unconditional responsibility for all performance, financial requirements and obligations of the contract including, but not limited to, maintenance of tangible net equity and payment of liquidated damages;
- D. Recite that "for good and valuable consideration, receipt of which is hereby acknowledged," the guarantor is making the guaranty;
- E. State that the guarantor stipulates that if the contract is ultimately awarded to the subsidiary, the Department will do so in reliance upon the guaranty;
- F. State that the undersigned corporate officer warrants:
 - 1) He or she has personally reviewed all pertinent corporate documents, including, but not limited to, articles of incorporation, bylaws, and agreements between the parent and subsidiary; and
 - 2) Nothing in these documents in any way limits the capacity of the parent to enter into the instant contract of guaranty.
- G. Include the following provisions: "The Department need not take any action against the Proposer, any other guarantor, or any other person, firm or corporation or resort to any security held by it at any time before proceeding against the guarantor.

Further, GUARANTOR hereby waives any and all notices and demands which may be required to be given by any other statute or rule of law and agrees that its liability hereunder shall be in no way affected, diminished, or released by any extension of time, forbearance, or waiver which may be granted to _____, its successor or assignee, and that this Guaranty shall extend to and include all future amendments, modifications, and extensions of the contract and all future supplemental and other agreements with respect to matters covered by the contract which the Department and _____

may enter into, with or without notice to or knowledge of GUARANTOR, but GUARANTOR shall have the benefit of any such extension, forbearance, waiver, amendment, modification, supplemental or other agreement; it being the purpose and intent of the parties hereto that the obligations of GUARANTOR hereunder shall be coextensive with, but not in the excess of, the obligations of _____, its successor or assignee, under the contract."

- H. Be presented in terms which the Department, in its discretion, determines will, as a whole, adequately establish the Proposer's financial responsibility; and
- I. Include the following provision: "Guarantor agrees that the guaranty shall continue in full force and effect despite any change in the legal or corporate status of the subsidiary, including but not limited to, its sale, reorganization, dissolution or bankruptcy."

36. Department's Right to Equitable Adjustment

Whenever the Department is to obtain services, goods, equipment, facilities or capabilities under the contract, the cost for which is included in the bid price(s) or is cost reimbursable, and the Contractor fails to perform or provide the services, goods, equipment, facilities, or capabilities, or substitutes other services, goods, equipment, facilities, or capabilities, which are not fully equal to those required under the contract and which are not acceptable to the Contracting Officer, the Department may require the Contractor to correct its performance within a period of thirty (30) days after written notice by the Contracting Officer to the Contractor specifying the deficiency, or such longer period as may be granted by the Contracting Officer. If the Contractor has failed to correct its performance during this period, the Contracting Officer, at his/her option, may make an immediate and equitable adjustment to recover the cost of services, goods, equipment, facilities or capabilities not provided or performed from administrative payments due the Contractor which stem from the bid price(s) or may implement a cost-savings change order. Upon notification from the Contracting Officer, the Contractor shall fully document the change and submit this documentation together with certified cost and pricing data to the Contracting Officer in the time period requested.

This remedy shall be in addition to and not in lieu of any other remedy provided to the Department in this contract, or by law.

The Contractor shall comply with the California Code of Regulations, Title 10, Section 1300.78, which requires that administrative costs of health care service plans not exceed fifteen percent (15%) of enrollee revenue (Pure Premium Fund payments).

37. Liquidated Damages Provisions

A. General

It is the policy of the California Legislature to use the liquidated damage provisions in State contracts, as shown by Civil Code, Section 1671 (b), Public Contract Code, Section 10226, and 13 California Law Revision Commission Reports 1740 and 1741. If the Contractor does not provide or perform the requirements referred to or listed in this contract, damage to the State will result.

- 1) The maximum amount of liquidated damages payable by the Contractor over any twelve (12)-month period is one million five hundred thousand dollars (\$1,500,000); and
- 2) In the event of cascading Contractor failures resulting from a single failure subject to liquidated damages, the Department will be entitled to assess the highest single liquidated damage penalty only. There will be no concurrent applications of liquidated damages resulting from cascading failures related to a single failure.
- 3) The Department may, at its discretion, offset liquidated damages from administrative payments to the Contractor;

Nothing in this provision shall be construed as relieving the Contractor from performing any other contract duty not listed herein, nor is the Department's right to enforce or seek other remedies for failure to perform any other contract duty hereby diminished.

B. Takeover Phase Requirements

The Contractor shall complete all Takeover preparations as required, install the CD-MMIS, complete system testing, and pass Department acceptance testing.

- 1) Liquidated Damages:
 - a) After three (3) days written notice to the Contractor specifying the delay and that liquidated damages will be assessed accordingly, the Contracting Officer may impose liquidated damages of five thousand dollars (\$5,000) per day for each day of delay in completion of system testing or acceptance testing of any of the subsystems of the CD-MMIS beyond the periods defined in the Contract, except those identified in this Exhibit E, Additional Provision 37, Liquidated Damages Provisions.
 - b) In addition, after three (3) days written notice to the Contractor specifying the delay and that liquidated damages will be assessed accordingly, the Contracting Officer may impose liquidated damages of two thousand five

hundred dollars (\$2,500) per day for each day of delay in installation, successful system testing or acceptance testing of those subsystems identified in this Exhibit E, Additional Provision 37, Liquidated Damages Provisions, or seven thousand five hundred dollars (\$7,500) per day.

- c) In addition, after three (3) days written notice to the Contractor specifying the requirement not provided or performed and that liquidated damages will be assessed accordingly, the Contracting Officer may impose liquidated damages of five hundred dollars (\$500) per day for each and every other Takeover requirement not provided or performed pursuant to the contract schedule until such requirement is provided or performed.

C. CD-MMIS Operations, General Terms and Conditions, Change Requirements and Payment Provisions

The Contractor shall provide or perform each of the CD-MMIS Operations requirements, General Terms and Conditions requirements, Change Requirements and Payment Provision requirements, as stated in the contract. (The General Terms and Conditions, the Change Requirements and the Payment Provisions are applicable for the term of the contract.)

- 1) Except as provided for in this Exhibit E, Additional Provision 37, Liquidated Damages Provisions, for each and every Contractor requirement not provided or performed as scheduled, or if a requirement is provided or performed inaccurately or not completely, the Contracting Officer shall notify the Contractor in writing that the requirement was not provided or performed, as specified and that liquidated damages will be assessed accordingly.
- 2) The Contractor shall have fifteen (15) days from the date of such written notice from the Contracting Officer, or longer if the Contracting Officer so allows, to provide or perform the requirement as specified.
- 3) Liquidated Damages:

If the Contractor does not provide or perform the requirement within fifteen (15) days of the written notice, or longer if allowed by the Contracting Officer, the Contracting Officer may impose liquidated damages on the Contractor of five hundred dollars (\$500) per requirement per day for each day the requirement continues to not be provided or performed. If, after fifteen (15) additional days from the date the Contracting Officer imposed liquidated damages, the requirement has still not been provided or performed, the Contracting Officer, after written notice to the Contractor, may increase the liquidated damages to one thousand dollars (\$1,000) per requirement per day for each day the requirement continues to not be provided or performed.

D. Surveillance Utilization Review Subsystem, Management Administrative Reporting Subsystem, and Other CD-MMIS Report Operational Requirements

Because adequate personnel, system capacity, hardware and software are critical for efficient production of S/URS, MARS, and other CD-MMIS reports, the Contractor shall provide and maintain these requirements including the S/URS and MARS liaison function from the beginning of Operations throughout the contract period.

- 1) If the Contracting Officer determines that the Contractor has not provided and/or maintained a requirement for full S/URS, MARS and other CD-MMIS reports, he/she shall so notify the Contractor in writing that liquidated damages will be assessed accordingly. After such notice in writing, the Contractor shall have thirty (30) days, or longer as the Contracting Officer may allow, to provide or perform the requirement.

2) Liquidated Damages:

If, after notice, the Contractor does not provide or perform the requirement within thirty (30) days, or such longer period as the Contracting Officer may allow, the Contracting Officer may impose liquidated damages of five thousand dollars (\$5,000) per day for each requirement not provided or performed.

E. Timely CD-MMIS Reporting Requirements Including S/URS and MARS

The Contractor shall produce and deliver timely CD-MMIS reports including S/URS and MARS reports within the specified timeframes and descriptions in the contract. Reports shall be produced and delivered on both a scheduled and an on-request basis according to the schedule designated by the Department.

- 1) The Contracting Officer shall give written notice of any late report and that liquidated damages will be assessed accordingly. After such notice, the Contractor will have twenty-four (24) hours, or longer if allowed by the Contracting Officer, to deliver the report to the Department.

2) Liquidated Damages:

For each late report not delivered within the twenty-four (24)-hour notice period, including S/URS and MARS reports, the Contracting Officer may impose liquidated damages of five hundred dollars (\$500) per day per report until the report is provided. For any late report that is not delivered after thirty (30) days or such longer period as the Contracting Officer may allow, the Contracting Officer, after written notice, may increase the liquidated damages assessment to one thousand dollars (\$1,000) per day per report until the report is provided.

F. Accurate CD-MMIS Reporting Requirements Including S/URS and MARS

Every report due the Department shall contain sufficient and accurate information to fulfill the Department's purpose for which the report was generated.

- 1) The Contracting Officer shall give the Contractor written notice of a report that is either insufficient or inaccurate and that liquidated damages will be assessed accordingly. After such notice, the Contractor shall have fifteen (15) days, or such longer period as the Contracting Officer may allow, to correct the report.

- 2) Liquidated Damages:

If the Contractor fails to correct the report within the fifteen (15) days, or such longer period as the Contracting Officer may allow, the Contracting Officer may impose liquidated damages of five hundred dollars (\$500) per day per report until the corrected report is delivered. If the report remains uncorrected for more than thirty (30) days from the date liquidated damages are imposed the Contracting Officer, after written notice, may increase the liquidated damages assessment to one thousand dollars (\$1,000) per day per report until the report is corrected.

G. Turnover Responsibilities

Beginning with Turnover, the Contractor shall provide or perform the Turnover requirements of the Contract.

- 1) For each and every Contractor requirement not provided, or for requirements that are performed inaccurately or not completely, the Contracting Officer shall notify the Contractor in writing that the requirement was not provided or performed as specified and that liquidated damages will be assessed accordingly.

The Contractor shall have one (1) day from the date of such written notice by the Contracting Officer, or longer if the Contracting Officer may allow, to provide or perform the requirement as specified.

- 2) Liquidated Damages:

If the Contractor does not provide or perform a requirement within one (1) day of the written notice, or longer if allowed by the Contracting Officer, the Contracting Officer may impose liquidated damages of five thousand dollars (\$5,000) per day for each requirement the Contractor fails to provide or perform.

H. Department Policy Implementation Requirements

The Contractor is responsible for following Department directions to implement Department policy in a timely manner as prescribed in the contract. The Contracting Officer will direct the Contractor in writing to implement various Department policies such as, but not limited to edit, audit, and other system function changes that may not require system enhancements. The Contracting Officer shall give written notice to the Contractor of any failure to comply with any such direction and that liquidated damages will be assessed accordingly. After such notice, the Contractor will have ten (10) days, or such longer period as the Contracting Officer may allow, in which to comply.

1) Liquidated Damages:

After ten (10) days, or such longer period as allowed by the Contracting Officer, if the Contractor does not implement a defined Department policy as directed, the Contracting Officer may impose liquidated damages of five hundred dollars (\$500) per day for each day the policy is not implemented from the original date of such non-implementation. If after fifteen (15) additional days from the date the Contracting Officer imposes liquidated damages, the policy is still not implemented, the Contracting Officer, after written notice to the Contractor, may increase the liquidated damages to one thousand dollars (\$1,000) per day for each day the policy continues to not be implemented.

- 2) The Contracting Officer shall not impose damages pursuant to this Exhibit E, Additional Provision 37, if liquidated damages are assessed pursuant to another Provision for the same conduct.

I. Runout Requirement

The Contractor shall carry out its obligations under, Exhibit A,-Attachment IV, Turnover and Runout Requirements, Provision 7, Runout Requirements.

- 1) For each and every Contractor requirement not provided or performed as required, the Contracting Officer shall notify the Contractor in writing that the requirement was not provided or performed as specified.

The Contractor shall have one (1) day from the date of such written notice from the Contracting Officer, or longer if the Contracting Officer so allows, to provide or perform the requirement as specified.

2) Liquidated Damages:

If the Contractor does not provide or perform the requirement within one (1) day of the written notice, the Contracting Officer may impose liquidated

damages of five hundred dollars (\$500) per day for each occurrence for each day the requirement is not provided or performed. If, after fifteen (15) additional days from the date the Contracting Officer imposed liquidated damages, (1) the requirement is still not provided or performed, or (2) at the second or any subsequent occurrence of the same type of failure to provide or perform following this fifteen (15)-day period, the Contracting Officer, after written notice to the Contractor, may increase the liquidated damages to one thousand dollars (\$1,000) per day per occurrence for each day the requirement is not provided or performed.

If the Contracting Officer determines that the failure to provide or perform the requirement was caused in part, by the State, the Contracting Officer shall reduce the damages proportionately.

J. Access

- 1) The Contractor shall not deny individuals so authorized in the contract access at any time permissible by the contract to Contractor's operations and activities for the purpose of review.

2) Liquidated Damages:

The Contracting Officer will notify the Contractor in writing of any failure to provide access. If the Contractor fails to provide access, the Contracting Officer may impose liquidated damages in the amount of one thousand dollars (\$1,000) for each occurrence of denial until access is provided. There may be more than one (1) occurrence of denial per day. An occurrence is defined as each and every act that denies an authorized individual access, as defined in the contract.

K. Contractor Denial Or Unnecessary Delay Of Authorization Or Payment For Necessary And Appropriate Dental Services

The Contractor shall, in accordance with the specifications and requirements of the contract and over the term of contractual obligations, authorize and pay for necessary, appropriate, and covered dental services in a timely manner.

- 1) At any time during the term of the contractual obligations, should the Contractor deny or unnecessarily delay authorization or payment for covered dental services deemed necessary and appropriate by the Department, the Contracting Officer shall so notify the Contractor in writing for each occurrence discovered that the requirement(s) was not provided or performed as specified. The Contractor shall have three (3) State workdays from the date of such written notice by the Contracting Officer, or such longer period as the Contracting Officer may allow, to provide or perform the requirement(s) as specified.

2) Liquidated Damages:

If the Contractor does not provide or perform a requirement within three (3) days of the written notice, or longer if allowed by the Contracting Officer, the Contracting Officer may impose liquidated damages of five hundred dollars (\$500) per day per occurrence for each requirement that continues not to be provided or performed. If the requirement is not provided or performed within ten (10) days, or longer if allowed by the Contracting Officer, after written notice, the Contracting Officer may increase the liquidated damages imposed per occurrence for each requirement from five hundred dollars (\$500) to one thousand dollars (\$1,000) per day until the requirement(s) is provided or performed.

L. Improper Clearing of Claims/TARS Through the Processing System (Manual and Automated)

The CD-MMIS sets forth certain controls, processes and procedures, both manual and automated, which are put in place to ensure the proper adjudication of claims, TARs and Claims Inquiry Forms (CIFs). These controls are contained in various processes and data including, but not limited to, edits, audits, program documentation and procedure and suspense manuals or DOILs which deal with all phases of the claims, TAR and CIF processing systems. Should the Contractor systematically and/or procedurally ignore, improperly circumvent, or without prior Department approval, utilize automated processing instead of required manual processing to bypass or override one or more of these controls, the Department and the dental program will suffer damage.

- 1) In the first instance where, on a systematic basis, the CD-MMIS controls, processes, or procedures were not provided or performed in a complete and accurate manner, or provided or performed in a manner counter to the CD-MMIS controls, processes, or procedures approved by the Department, the Contracting Officer shall notify the Contractor in writing that the requirement(s) was not provided or performed as specified. After such notice in writing, the Contractor shall have five (5) days, or such longer period as the Contracting Officer may allow, to provide or perform the requirement(s).
- 2) For each and every subsequent instance during the life of the contract, where, on a systematic basis, the CD-MMIS controls, processes or procedures were not provided or performed in a complete and accurate manner, or provided or performed in a manner counter to the CD-MMIS controls, processes or procedures approved by the Department, the Contracting Officer shall notify the Contractor in writing that the requirement(s) was not provided or performed as specified.

3) Liquidated Damages:

In the first (1st) instance as described above, if after notice, the Contractor does not provide or perform the requirement(s) within five (5) days, the Contracting Officer may impose liquidated damages of ten thousand dollars (\$10,000) per day for each instance where the requirement(s) continue to not be provided or performed in accordance with specifications. For each and every subsequent instance during the life of the contract, upon receipt by the Contractor of the written notice, the Contracting Officer may impose liquidated damages of ten thousand dollars (\$10,000) per day for each instance where the requirement(s) continue to not be provided or performed in accordance with specifications.

- 4) The Contracting Officer may also impose liquidated damages of ten thousand dollars (\$10,000) per day for each instance where the requirement(s) were not provided or performed in accordance with specifications or when prior Department approval was not obtained for variations.

M. Interest on Pending Liquidated Damages

Once the Department has determined that liquidated damages are to be assessed, the Contracting Officer shall notify the Contractor in writing of the reason for and amount of the assessment(s). The assessment notice shall be sent to the Contractor by certified mail, return receipt requested, or by any other method which provides evidence of receipt. At the Contracting Officer's discretion, the assessment notice may direct payment of the assessment by the Contractor. If payment is thus directed, the Contractor shall pay the assessment within thirty (30) days of receipt of the assessment notice.

Any liquidated damages assessment may also be collected, at the Contracting Officer's discretion, by offsetting the funds from payment(s) due the Contractor after the date of assessment.

If it should later be determined in the disputes process that funds collected by the State to pay liquidated damages assessment should be refunded, the State shall pay interest accruing from the date of offset or collection. The interest rate paid shall be the average rate for investment in the Pooled Money Investment Fund (PMIF) in effect for the month in which the assessment was offset or otherwise collected. When a liquidated damages assessment is offset or otherwise collected over a period of two (2) or more months, the interest rate paid by the State shall be the average rate for investment in the PMIF in effect for the first (1st) month in which the assessment was offset or otherwise collected, revised quarterly for the period of time the assessment was retained by the State.

The Contractor shall pay interest to the State on all liquidated damages assessments which are not either paid or offset against payment due the

Contractor within thirty (30) days of the date of receipt of the assessment notice. The interest rate paid shall be the average rate for investment in the PMIF in effect for the month of assessment. If the Contractor's continuing liability for one (1) particular liquidated damages assessment extends over a period of two (2) or more months, the interest rate shall be the average for investment in the PMIF for the first (1st) month in which liquidated damages were assessed, revised quarterly over the period the assessment remained uncollected.

Interest accrues during all periods of time in which the liquidated damages assessment is unpaid or otherwise uncollected. For instance, interest accrues during periods in which collection of the assessment has been suspended, pending the outcome of the dispute or appeal.

If a reduction in the final amount of liquidated damages is finally determined, the interest shall be prorated unless impractical to do so.

N. Conditions For Termination of Liquidated Damages

Except as waived by the Contracting Officer, no liquidated damages imposed on the Contractor shall be terminated or suspended until the Contractor issues a written notice of correction to the Contracting Officer certifying the correction of condition(s) for which liquidated damages were imposed, and until all Contractor corrections have been subjected to adequate system testing or other verification at the approval of the Contracting Officer. Liquidated damages will cease on the day of the Contractor's certification only if subsequent testing of the correction establishes that, indeed, the correction has been made in the manner and at the time certified by the Contractor.

- 1) The Contractor shall provide the necessary system time to system test any correction the Contracting Officer deems necessary.
- 2) The Contracting Officer shall determine whether the necessary level of documentation has been submitted to verify corrections. The Contracting Officer shall be the judge of the sufficiency and of the accuracy of any documentation.
- 3) System corrections must be sustained for a reasonable period of at least ninety (90) days from Department acceptance. Otherwise, liquidated damages may be imposed again without a succeeding grace period within which to correct.
- 4) The Contractor's use of resources to correct deficiencies shall not be the cause of other system problems.

O. Severability of Individual Liquidated Damages Clauses

If any portion of these liquidated damages provisions are determined to be unenforceable, the other portions shall remain in full force and effect.

38. Inventory and Treatment of Department Property

In addition to the provisions regarding Department property set forth in Exhibit D(F), Special Terms and Conditions, Provision 4, Equipment Ownership/Inventory/Disposition, the Contractor shall ensure:

- A. Title to all property furnished by the Department or furnished under the cost reimbursement provisions of the contract shall remain with the Department.
- B. Any property of the Department furnished to the Contractor or any subcontractor shall, unless provided herein, or approved by the Contracting Officer, be used only for the performance of the contract.
- C. The Contractor shall maintain an ongoing inventory of all Department-owned equipment, whether it is intended for Department use or Contractor use, acquired through the Takeover phase of this contract or purchased through cost reimbursement. The Contractor shall utilize an electronic inventory bar-coding system, which shall identify, log and track all assets by equipment type. The system shall have the capability of tracking transfers of inventory between all office locations involved with the Medi-Cal Dental Fiscal Intermediary Contract, to include the Contractor's facilities and all Department offices. The system shall also have the capability of developing reports, sortable by type of equipment, location, and date acquired. The system shall have the capability of comparing previous inventory reports with current inventory reports. If discrepancies are determined, the Contractor shall report to the Department the specific reason for the discrepancies.
- D. The Contractor shall be responsible for any loss or damage to property of the Department which results from the negligence or willful acts of the Contractor or any subcontractor or which results from the failure on the part of the Contractor or any subcontractor to maintain and administer that property in accordance with sound management practices. Additionally, the Contractor shall be responsible for any consequential damage to the State stemming from the loss or destruction of Department property which is caused, in whole or in part, by the Contractor's (or a subcontractor's) willful act(s) or gross negligence. Further, the Contractor shall provide for alternative services/equipment/facilities to fully meet its contractual obligations should Department-owned property be lost or destroyed through the actions or inactions of the Contractor or its agents. Provision of the alternative resources of services/equipment/facilities shall be made by the Contractor with no additional reimbursement or forgiveness from the State in terms of money or time.

- E. Upon the Contractor becoming aware, while exercising reasonable diligence, of the happening of loss of, destruction of, or damage to any Department property, held or used either by it or by a subcontractor, the Contractor shall promptly notify the Department and shall take all reasonable steps to protect that property from further damage.
- F. The Contractor shall surrender to the Department all property of the Department held either by it or by a subcontractor prior to settlement, upon completion or termination of the contract.
- G. The Contractor shall keep all equipment in the system in good condition and repair, and shall not commit any waste thereof or permit anything to be done that may materially impair the value thereof. The Contractor shall use such equipment only in the ordinary course of its performance hereunder and shall not permit such equipment to be used in violation of any applicable law, regulation or policy of insurance. The Contractor shall ensure that any subcontractors also meet these requirements.

39. Conflict of Interest, Incompatible Activity of Contractor and Employees

A. Contractor Responsibilities – General

- 1) The Contractor shall submit for State review and approval, if acceptable, a “Conflict of Interest Disclosure Statement” (Disclosure Statement):
 - a) Two (2) weeks after the effective date of the contract;
 - b) An update on first (1st) day of month ten (10);
 - c) A yearly update thereafter; and
 - d) Anytime a change occurs which affects the previously submitted and approved statement. If such change occurs, a new statement, together with a Conflict of Interest Avoidance Plan, shall be sent to the Contracting Officer for prior review and approval within ten (10) State workdays of the change.
- 2) The Department intends to avoid any real or apparent conflicts of interest on the part of the Contractor. Hence, the Department reserves the right to determine, in its sole discretion, whether any information received from any source indicates the existence of a real or apparent conflict of interest and to require the Contractor to submit a Conflict of Interest Avoidance Plan for solving the conflict problem subject to prior Departmental review and approval. While it is desirable that the Contractor not have any contractual or financial relationships with providers, such relationships may be permissible so long as prompt, full disclosure is made and

adequate protective Conflict of Interest Avoidance Plans and procedures are developed, and reviewed and accepted by the Department.

- 3) For purposes of the contract, indirect interest and indirect income shall be defined as any interest owned or income received by the spouse, parent(s), or dependent(s) of the person(s) covered by the disclosure provisions of this Exhibit E, Additional Provision 39, Conflict of Interest, Incompatible Activity of Contractor and Employees.
- 4) The Disclosure Statement shall fully describe any direct or indirect interest the Contractor, parent or subcontractor has in any provider of Medi-Cal services (as defined in Title 22, CCR, Section 51051) or in any billing agent(s) for Medi-Cal services, together with the name and position description of the Contractor, any parent, or subcontractor employee, director, consultant, or officer about whom the disclosure is being made.
- 5) At a minimum, the Contractor's Disclosure Statement shall disclose the name and address of any and all providers or billing agent(s) for Medi-Cal services in which:
 - a) Neither the Contractor, any parent corporation, subcontractor, nor any of the above parties' employees, directors, consultants, or officers has a direct or indirect interest of more than one thousand dollars (\$1,000);
 - b) Neither the Contractor, any parent corporation, subcontractor, nor any of the above parties' employees, directors, consultants, or officers assigned to the contract is a director, officer, partner, trustee, employee, or holder of a management position, or is self-employed; and
 - c) Neither the Contractor, any parent corporation, subcontractor, nor any of the above parties' employees, directors, consultants, or officers assigned to the contract, has derived more than two hundred and fifty dollars (\$250) in direct or indirect income within the twelve (12) months immediately prior to the submittal of a proposal.
- 6) The Contractor shall disclose the name of any proposed subcontractor, consultant, officer, director, or employee who was employed by the State of California in the Department, the Governor's Office, Health and Human Services Agency, State Controller's Office, Office of the Attorney General, and/or the Legislature within the past two (2) years in accordance with Welfare and Institutions Code, Section 14104.6.
- 7) If a real or apparent conflict exists, the Contractor shall, together with the disclosure and at the time of that document's submittal, submit a Conflict of Interest Avoidance Plan and procedures to hold separate such

relationships and/or to safeguard against conflicts. If the Contractor has nothing to disclose under this Exhibit E, Additional Provision 39, it shall so certify in its Disclosure Statement.

- 8) The successful bidder shall furnish to the Department the ownership and control information required by Title 42, Code of Federal Regulations, Subpart 455.104 prior to contract effective date.
- 9) The Contractor Representative, or his/her designee, shall certify under penalty of perjury that such reports and updates to such reports are accurate, complete and current to the best of that individual's knowledge and belief, unless the Contracting Officer in writing expressly waives the requirement.
- 10) The Contractor shall submit a Conflict of Interest Avoidance Plan, with the required Disclosure Statement to safeguard against conflict of interest. This plan shall include procedures to:
 - a) Guard against conflict of interest;
 - b) Hold separate any disclosed relationships or any potential conflict of interest relationships that could arise during the life of the contract including, but not limited to such problematic matters as financial interactions; reporting; sharing of office space; staff interactions; or Contractor fulfillment of contract responsibilities; and
 - c) Ensure that the Contractor shall discharge its responsibilities and duties with disinterested skill, zeal, diligence, and that no Contractor's, parent corporation's, or subcontractor's employee, officer, director, or consultant will be in a position to exploit that position for private benefit or for other Contractor, or parent corporation, or subcontractor interests which are or may be in conflict with Department or State interests.

B. Conflict Of Interest, Current And Former State Employees

- 1) Current State Officers and Employees
 - a) The Contractor shall not utilize in the performance of the contract any State officer or employee in the State civil service or other appointed State official unless the employment, activity, or enterprise is required as a condition of the officer or employee's regular State employment. An employee in the State civil service is defined to be any person legally holding a permanent or intermittent position in the State civil service.

- b) If any State officer or employee is utilized or employed in the performance of the contract, Contractor shall first (1st) obtain written verification from the State that the employment, activity, or enterprise is required as a condition of the officer's, employee's, or official's regular State employment and shall keep said verification on file for three (3) years after the termination of the contract.
- c) The Contractor may not accept occasional work from any currently employed State officer, employee, or official.
- d) If the Contractor accepts volunteer work from any currently employed State officer, employee, or official, Contractor may not reimburse, or otherwise pay or compensate, such person for expenses incurred, including, without limitation, travel expenses, per diem, or other compensation in connection with volunteer work for the Contractor.
- e) The Contractor shall not employ any State officers, employees, or officials who are on paid or unpaid leave of absence from their regular State employment.
- f) The Contractor or anyone having a financial interest in the contract may not become a State officer, employee, or official during the term of the contract. The Contractor shall notify each of its employees, and any other person having a financial interest in the contract, that it is unlawful under Public Contract Code, Section 10410, for such person to become a State officer, employee, or official during the term of the contract unless any relationship with the Contractor giving rise to a financial interest, as an employee or otherwise, is first (1st) terminated.
- g) Occasional or one (1) time reimbursement of a State employee's travel expenses is not acceptable under Public Contract Code Section 10410.

2) Former State Officers and Employees

- a) The Contractor shall not utilize in the performance of the contract, any formerly employed person of any State agency or department that was employed under the State civil service, or otherwise appointed to serve in the State government, if that person was engaged in any negotiations, transactions, planning, arrangement, or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency or department. This prohibition shall apply for a two (2)-year period beginning on the date the person left State employment.

- b) The Contractor shall not utilize within twelve (12) months from the date of separation of services, a former employee of the contracting State agency or department if that former employee was employed in a policy-making position in the same general subject area as the proposed contract within the twelve (12)-month period prior to the employee leaving State service. (Citation: Public Contract Code Section 10411.)

- 3) Failure to comply with Exhibit E, Additional Provision 39.B.1) or 2) above.

If the Contractor violates any provision of 39.B. 1) or 2) above, such action by the Contractor shall render the contract void, unless the violation is technical or non-substantive. (Citation: Public Contract Code Section 10420.)

40. Location of Contractor's Facilities

- A. The Contractor is required to perform all work specified in the contract and to acquire facilities in accordance with contractual requirements, within a twenty-five (25) mile radius of the State Capitol building in Sacramento. This twenty-five (25) mile radius shall be calculated not by direct line miles but by actual miles to be driven in a car using readily accessible freeways. The Contractor shall be required to have this facility fully installed within seven (7) months fifteen (15) days after the contract effective date. However, beginning with the effective date of the contract, all required CD-MMIS Takeover activities shall take place within the twenty-five (25) mile radius, except for the following exclusions:

- 1) Activities of system analysts and programmers actually related to the installation of the CD-MMIS during Takeover. All of the Contractor's Department/State liaison activities shall take place in Sacramento. Further, Contractor employees with first-hand knowledge of the system design, development, installation or modification; system documentation; program specifications; manual processes; deliverable development; and/or system testing, shall be made available to the Department for liaison activities in Sacramento. Once Contractor systems testing or Department acceptance testing begins, all further work on systems transfer of the CD-MMIS shall be performed at the Sacramento facility; and
- 2) The Contracting Officer may grant further exemptions with prior written approval.

- B. The Department shall have the irrevocable right to lease the claims processing facilities utilized in performance by the Contractor under the contract beginning at the end of Contract Operations, or in the event of termination under Exhibit E, Additional Provision 3, Cancellation/Termination, Additional Provision 4, Procedures on Termination, and Additional Provision 8, Term of Contract, for a

term of up to six (6) years. The Department and the Contractor agree to negotiate in good faith to develop and agree to lease terms and conditions. The rental for the facilities shall not exceed the fair market rent for comparable facilities in the same geographic area as determined by the California Department of General Services.

41. Minimum Financial Criteria

To demonstrate and assure the Contractor's or its parent corporation's capacity to fulfill its obligations under this contract and to serve as security against the risk of loss or insolvency, the Contractor shall meet all applicable Department of Managed Health Care, Knox-Keene Health Care Service Plan Act of 1975, requirements regarding financial viability and reporting, and maintain a minimum tangible net equity (TNE) in accordance with Health and Safety Code Sections 1344 and 1376, in addition to the following requirements.

A. Definitions

For the purposes of this section:

- 1) "Net equity" means the excess of total assets over total liabilities, excluding liabilities that have been subordinated in a manner acceptable to the Contracting Officer. "Tangible net equity" means net equity reduced by the value assigned to intangible assets including, but not limited to, goodwill; going concern value; organizational expense; starting-up costs; obligations of officers, directors, owners, or affiliates which are not fully secured, except short-term obligations of affiliates for goods or services arising in the normal course of business which are payable on the same terms as equivalent transactions with non-affiliates and which are not past due; long-term prepayments of deferred charges, and nonrefundable deposits. An obligation is fully secured for purposes of this section if it is secured by tangible collateral, other than by securities of the Contractor or an affiliate, with equity of at least one hundred and ten percent (110%) of the amount owing. The cash balance in the Medi-Cal dental contract Pure Premium Fund shall not be considered in calculating TNE.

TNE sufficient to meet the requirements of this section may be established through the resources of a parent corporation.

- 2) The "number of monthly eligible beneficiaries" shall be the State's estimated average number of monthly eligible beneficiaries covered by the contract.

B. Tangible Net Equity

- 1) Contractor shall at all times have and maintain a TNE at least equal to the greater of:

- a) One million dollars (\$1,000,000); or
 - b) The sum of two (2) percent of the first (1st) one hundred and fifty million dollars (\$150,000,000) of annualized premium revenues plus one (1) percent of annualized premium revenues in excess of one hundred and fifty million dollars (\$150,000,000); or
 - c) An amount equal to the sum of:
 - 1. Eight percent (8%) of the first (1st) one hundred and fifty million dollars (\$150,000,000) of annualized expenditures, and
 - 2. Four percent (4%) of the annualized expenditures.
- 2) If Contractor is not Knox-Keene licensed prior to the effective date of this contract, Contractor must maintain a minimum TNE of:
- a) Twenty percent (20%) of the amount required by subsection 1) or 2) above as applicable, within six (6) months of the effective date of this contract;
 - b) Thirty-six percent (36%) of the amount required by subsection 1) or 2) above, as applicable, within twelve (12) months of the effective date of this contract;
 - c) Fifty-two percent (52%) of the amount required by subsection 1) or 2) above, as applicable, within eighteen (18) months of the effective date of this contract;
 - d) Sixty-eight percent (68%) of the amount required by subsection 1) or 2) above, as applicable, within twenty-four (24) months of the effective date of this contract;
 - e) Eighty-four (84%) of the amount required by subsection 1) or 2) above, as applicable, within thirty (30) months of the effective date of this contract; and
 - f) One hundred percent (100%) of the amount required by subsection 1) or 2) above, as applicable, within thirty-six (36) months of the effective date of this contract.

The Contracting Officer may extend the time periods noted above if he/she determines that such extension is in the best interest of the Department and Contractor.

3) Medi-Cal Dental Contract Contingency Reserve

a) First (1st) Year

For the first (1st) year of contractual services commencing with the first (1st) year of the Operations Phase, not less than \$6,500,000 of the minimum TNE amount required in accordance with the preceding Minimum Financial Criteria, shall be in cash or cash equivalents.

Cash and cash equivalents referred to above shall be restricted for use only to pay for covered Medi-Cal dental benefits when and if the Pure Premium Fund has no balance and shall be referred to as Medi-Cal Dental Contract Contingency Reserve.

For purposes of satisfying this requirement, cash equivalents shall be limited to:

1. Shares listed on the New York Stock Exchange, the American Stock Exchange, the Pacific Stock exchange, or the Over-the-Counter Margin List, which shall be valued at ninety percent (90%) of their market value.
2. Securities issued or guaranteed by the United States Government or any agency thereof, which shall be valued at the percentages of their market value specified below:
 - a) Less than three (3) years to maturity – one hundred percent (100%); and
 - b) Three (3) or more years to maturity – ninety-eight percent (98%).
3. Obligations of any state or political subdivision or instrumentality thereof which are rated A or better by Moody's Investors Service or A or better by Standard and Poors, which shall be valued at the percentages of their market value specified below:
 - a) Less than five (5) years to maturity – ninety-eight percent (98%); and
 - b) Five (5) or more years to maturity – ninety-five percent (95%).
4. Certificates of deposit or other evidence of deposit in, or acceptance of a bank insured by the Federal Deposit Insurance Corporation or certificates of deposit of share accounts of, a savings and loan association insured by the Federal Savings and Loan Insurance Corporation which shall be valued at their book value as determined

by generally accepted accounting principles, less computed early withdrawal penalties.

5. Promissory notes or other evidences of indebtedness having a maturity date within nine (9) months of issuance, exclusive of days of grace, or any renewal thereof which is likewise limited, and which are rated P2 or better by Moody's Investors Service and A2 or better by Standard and Poors, which shall be valued at their market value.
6. Nonconvertible debt securities having a fixed maturity which are rated A or better by Moody's Investors Service or A or better by Standard and Poors, which shall be valued at the percentages of their market value specified below:
 - a) Less than two (2) years to maturity – one hundred percent (100%);
 - b) Two (2) years but less than five (5) years to maturity – ninety-eight percent (98%); and
 - c) Five (5) or more years to maturity – ninety-five percent (95%).

b) Subsequent Years

Subsequent Years -- For each subsequent twelve (12) months of contractual services under the Operations Phase, the cash and cash equivalent in the Medi-Cal Dental Contract Contingency Reserve, established in accordance with this Exhibit above, shall equal the larger of:

1. \$6,500,000;
2. An amount equal to four and one half percent (4.5%) of the total Medi-Cal dental claims costs incurred by the Contractor for the preceding twelve (12)-month period.

C. Pure Premium Fund

In addition to satisfying the TNE and the Medi-Cal Dental Contract Contingency Reserve requirements established above, the Contractor shall establish a separate group of accounts called the Pure Premium Fund (PPF). The PPF shall be used to account for all transactions for underwriting the insured dental benefits coverage.

- 1) The cash balance on hand in the PPF shall not be considered in calculating TNE or the Medi-Cal Dental Contract Contingency Reserves for purposes of

satisfying the requirements listed for the definitions in this Exhibit E, Additional Provision 41, Minimum Financial Criteria.

- 2) The Contractor shall deposit all advance PPF payments, all six (6)- and twelve (12)-month reconciliation adjustments and all retroactive rate adjustments to the PPF. The Contractor shall draw funds from the PPF as needed to pay incurred claims costs and adjustments. Unused PPF amounts shall be retained on account in the PPF. Unused PPF deposits on account in the PPF shall be retained on account in the PPF in cash or cash equivalents.
- 3) The Department will allow the Contractor to pay providers for cost reimbursement provisions of the insured dental benefits out of the PPF if the Contractor's billing statements are made on a timely basis. The Department reimbursement payments shall then be deposited into the PPF.
- 4) The Department shall have prior approval rights of all withdrawals from the PPF for purposes other than those specified in this section.

Funds recovered by the Contractor as the result of claims payment adjustments, fraud and abuse, erroneous Contractor payments, and other coverage recovery (where authority to undertake recovery is not retained by the State) shall also be deposited to and be retained on account in the PPF. Fraud and abuse recoveries are returned to the Department when they are the result of State-initiated actions culminating in a judicial process and court action favorable to the State. Where authority to recover funds is the State's, these funds shall be deposited in State accounts.

All PPF monies shall be invested in accordance with Knox-Keene requirements. In addition, investments of PPFs are limited to those found in the Government Contract Code, Section 16430. Under no circumstances shall the Contractor's investments interfere with the Contractor's ability to pay claims in a timely manner.

All interest or investment income earned using the balance of the PPF or on funds issued in a checkwrite and awaiting clearance at a bank shall be deposited to the PPF.

The Department may, at its option, require the Contractor to establish the PPF as a trust with the Contractor as trustee and the State and the Contractor as beneficiaries and with payment to the Contractor contingent upon the determination made pursuant to the payment provisions of this contract. Any trust established pursuant to this provision shall be subject to Department review and approval, if acceptable.

The Contractor shall estimate and record in its books of account for the Medical Dental Contract PPF the fund's liability for Incurred But Not Reported (IBNR) claims at least monthly. Such estimate shall be based upon the

trends of incurred claims during the last three (3) months, adjusted to reflect changes or trends in the number of Medi-Cal beneficiaries, changes in the fees paid to providers and other factors reasonably believed to affect the amount of IBNR claims. The working papers, including memoranda relating to the basis for adjustments, shall be maintained as a part of the records of the Contractor. Where the Contracting Officer determines that the Contractor's method of calculating its estimated liability for incurred claims and unreported claims is inappropriate or the derived amounts inadequate, the Contracting Officer shall have authority to direct the Contractor to change its method of calculating and/or its estimated amount for such incurred and unreported liabilities.

D. Minimum Working Capital

The Contractor shall maintain a minimum working capital ratio of one (1) to one (1). For purposes of this paragraph, "working capital" means current assets less current liabilities.

E. Tangible Net Equity Supporting Documentation

Thirty (30) calendar days prior to the commencement of the Operations Phase, the Contractor shall submit to the Contracting Officer a balance sheet, prepared in accordance with generally accepted accounting principles, supporting that the minimum TNE and the Medi-Cal Dental Contract Contingency Reserve have been properly established in the manner required in this Exhibit E, Additional Provision 41, Minimum Financial Criteria.

F. Reinsurance

The Contractor may obtain reinsurance or make other arrangements:

- 1) For the cost of providing Medi-Cal dental benefits to any eligible beneficiary, the aggregate value which exceeds five thousand dollars (\$5,000) in any contract year; and
- 2) For the cost of Medi-Cal dental benefits provided to any eligible beneficiary other than through the contract because medical necessity required their provision before the services could be secured through the contract.

The Contractor may obtain reinsurance for not more than ninety percent (90%) of the amount by which Medi-Cal dental program costs for any contract year exceed one hundred and fifteen percent (115%) of its Medi-Cal dental program income for that contract year. Reinsurance beyond these parameters shall not be allowed under terms of this contract.

G. Provider Invested Funds

The Contractor shall not use or maintain a provider participation fund or provide for providers to invest funds to share in the risk of underwriting the loss that may occur in the Medi-Cal dental contract.

42. Financial Reporting Requirements

The Contractor shall provide the Contracting Officer with the information described below throughout the term of the contract.

A. Monthly Information

As soon as available, and in any event not later than thirty (30) calendar days, or for such other period as the Contracting Officer may authorize in writing, after the end of each month:

- 1) A monthly cash receipts and cash disbursement report pertaining to the Medi-Cal dental contract PPF to include at a minimum:
 - a) Revenue by source.
 1. PPF deposits identified by groupings and type;
 2. Interest and investment income;
 3. Contractor erroneous payment recoveries;
 4. Fraud and abuse payment recoveries; and
 5. Medi-Cal dental other coverage recoveries.
 - b) Expenses summarized by grouping of eligible beneficiaries.
- 2) A monthly IBNR claims liability estimate including an explanation of the method used to calculate the estimate.
- 3) A monthly calculation of the Contractor's TNE supported by a balance sheet prepared in accordance with generally accepted accounting principles and a monthly calculation of the Medi-Cal Dental Contract Contingency Reserve.
- 4) A signed statement by the Contractor's chief financial officer certifying that the above data is current, accurate, and complete; in accordance with generally accepted accounting principles; and in compliance with the established financial criteria and reporting requirements under this contract.

B. Quarterly Information

As soon as available, and in any event not later than thirty (30) calendar days after the close of each quarter of the Contractor's fiscal year, or for such other period as the Contracting Officer may authorize in writing:

- 1) Financial statements prepared in accordance with generally accepted accounting principles, prepared on a basis consistent with the certified financial reports furnished by the Contractor (unless the Contractor receives advance written approval from the Contracting Officer to vary from that basis, and such variance is adequately noted in the Contractor's report under this Exhibit E, Additional Provision 42, Financial Reporting Requirements. Such financial statements shall include:
 - a) A balance sheet for the Contractor as of the closing date of such quarter;
 - b) An income statement or statement of operations for such quarter;
 - c) A statement of changes in financial position for such quarter;
 - d) A calculation of the Contractor's TNE prepared in accordance with the requirements of Exhibit E, Additional Provision 41, Minimum Financial Criteria;
 - e) Sufficient and appropriate notes to provide adequate disclosure of, at a minimum, the following:
 1. The provision for IBNR claims and an explanation of the method of calculating such provision;
 2. Accounts and notes receivable from officers, directors, owners, or affiliates, including the name of the debtor, nature of the relationship, and nature of the receivable and its terms;
 3. Forgiven debts or obligations during the period of the financial statement, including the creditor's name and its terms; and
 4. Fraud and abuse payments recovered.
- 2) Copies of all financial statements and reports the Contractor generally makes available, during the quarter, to any of its guarantors, sureties, bonding companies or insurance carriers or has been required to file with the Securities and Exchange Commission or similar institutions, and regulatory agencies of the State and federal Government; and

- 3) A signed statement by the Contractor's chief financial officer certifying that the data provided is current, accurate, and complete; in accordance with generally accepted accounting principles; and in compliance with the established financial criteria and reporting requirements under the contract.

C. End-Of-Accounting Year Information

As soon as available, and in any event within ninety (90) calendar days after the end of each accounting year, or for such other period as the Contracting Officer may authorize in writing:

- 1) Annual financial statements, prepared in accordance with generally accepted accounting principles on a basis consistent with the prior year or years, including the auditor's letter to management on internal controls, accompanied by the report, certificate, or opinion of an independent certified public accountant;
- 2) Copies of proxy notices, financial statements, and reports the Contractor may make or has made available to any of its security or policyholders or has been required to file with the Securities and Exchange Commission or similar institutions;
- 3) If the report, certificate, or opinion of the independent certified public accountant is in any way qualified, the Department may require the Contractor to take such action as the Department deems appropriate to permit an independent certified public accountant to remove such qualification from the report, certificate, or opinion.

D. Other Information

The Contractor shall provide other such financial information at the request of the Contracting Officer.

E. Required Copies

The Contractor shall provide the Department with five (5) copies of each financial report required by this Exhibit E, Additional Provision 42, Financial Reporting Requirements.

F. Requests For Extension

The Contractor in writing shall obtain approval of Contractor requests for extension of time limits for the submission of Contractor financial reports required under the contract from the Contracting Officer. Oral requests shall not be approved by the Department.

G. Center for Medicare and Medicaid Services (CMS) Audits

For the fixed-price portions of the contract, the Contractor shall provide to the Department and to CMS, for review during a CMS audit, a report that includes an annual breakdown of direct labor expenses by position, summarized by Contractor organization (e.g., Provider Relations) and total cost. To assist in the audit, the Contractor shall also provide duty statements for those positions requested by the auditor.

H. Additional Requirements

- 1) Whenever, pursuant to the contract, a financial statement or other report is required to be certified or be accompanied by the opinion of a certified public accountant, such accountant shall be independent of the Contractor, determined in accordance with Accounting Series Release Number 126 issued by the Securities and Exchange Commission.
- 2) The term "generally accepted accounting principles," when used in regard to financial statements, assets, liabilities, and other accounting items, means generally accepted accounting principles as used in business enterprises organized for profit. Accordingly, Financial Accounting Standards Board Statements, Accounting Principles Board Opinions, accounting research bulletins, and other authoritative pronouncements of the accounting profession shall be applied in determining generally accepted accounting principles unless such statements, opinions, bulletins, and pronouncements are inapplicable. Section 510.05 of the American Institute of Certified Public Accountants (AICPA) Professional Standards, in and of itself, shall not be sufficient reason for determining inapplicability of statements, opinions, bulletins, and pronouncements.
- 3) Whenever the financial statements or reports required pursuant to the contract are to be reported upon or certified by an accountant other than the accountant certifying the Contractor's most recent filing, the Contractor shall furnish the Department with a separate letter stating whether in the eighteen (18) months preceding the engagement of the new accountants there was any disagreement with the former accountants on any matter of accounting principles or practices, financial statement disclosure or auditing procedure, which such disagreement if not resolved to the satisfaction of the former accountants would have caused the accountants to make reference to the subject matter of such disagreement in his opinion or report. A principal officer of the Contractor must verify this letter. The Contractor shall also request the former accountants to furnish them with a letter addressed to the Department stating whether the accountants agree with the statements contained in the letter of the Contractor and, if not, stating the respects in which they do not agree. The notification by the Contractor along with the former accountant's letter, if necessary, must be furnished to the Department

within forty-five (45) calendar days of the engagement of the new accountants.

- 4) The Department may reject any financial statement, report, certificate, or opinion (other than certified financial reports) submitted to the Department under the contract by notifying the Contractor of its rejection and the cause thereof. Within thirty (30) calendar days after the receipt of such notice, or such other period as the Contracting Officer may allow, the Contractor shall correct such deficiency and submit an amended report.
- 5) If any report(s) required under the contract indicate noncompliance with established financial criteria, a written plan to correct such noncompliance shall be submitted by the Contractor with the report. The plan shall be accompanied by a specified time schedule for the corrective activities or actions prepared.
- 6) The Contracting Officer shall have the authority to accept the corrective action plan and its time schedule as proposed by the Contractor, or to reject either the proposed plan or the time schedule for its implementation and completion as unreasonable or unacceptable. Where the Contracting Officer rejects the corrective action plan and/or the proposed time schedule, the Contracting Officer shall notify the Contractor in writing of the reason(s) for such rejection. The Contractor shall have five (5) State workdays from receipt of such notice to submit an amended corrective action plan and/or time schedule to the Contracting Officer.

43. Accounting Requirements

The Contractor shall establish accounting policies and procedures, maintain records, and supply reports periodically and as requested by the Department. Accounting policies and practices shall be in accordance with generally accepted accounting principles. The Contractor shall be responsible for establishing and maintaining additional accounting policies, procedures, and records as required to control and document its fiscal activities. These accounting procedures shall remain the same for the entire contract period, unless prior approval of changes is received from the Contracting Officer.

The Department encourages the Contractor to employ new technology whenever possible utilizing best-practice characteristics in order to provide an efficient, streamlined accounting/document processing solution versus manual processes.

A. Accounting Procedure Inclusions

The accounting procedures, policies and records shall include, but not be limited to, the following:

- 1) A definition of accounting relationships with other government contracts, related business organizations, and subcontractors;
- 2) A procedure for personnel time reporting by contractual areas: Takeover, Operations, Hourly Reimbursed Special Groups including employee time sheets, Change Orders, Turnover, Runout, Cost Reimbursement, and Hourly Reimbursement;
- 3) A procedure for reporting travel expenses by contractual areas: Takeover, Operations, Hourly Reimbursed Special Groups, Change Order, Turnover, Runout, Cost Reimbursement, and Hourly Reimbursement;
- 4) A procedure to order and pay for goods and services by contractual areas: Takeover, Operations, Hourly Reimbursed Special Groups, Change Order, Turnover, Runout, Cost Reimbursement, and Hourly Reimbursement; and
- 5) A cost accounting system in conformance with Title 48, Code of Federal Regulations, Part 31, which details costs by Takeover, Operations, Hourly Reimbursed Special Groups, Change Orders, Turnover, Runout, Cost Reimbursement, and Hourly Reimbursement. Costs incurred for the operation of the CD-MMIS printing function shall be segregated into direct and indirect cost categories. And, the indirect costs associated with printing shall be allocated according to the methodology stated in the Cost Allocation Plan submitted to the Department, and approved by the Contracting Officer.

B. Accounting Records Supplied to the Department

Specific accounting records and practices shall be subject to federal and Department acceptance. The Contractor shall supply to the Department fiscal records and records of contract expenses. These records shall include, but not be limited to, the following information:

- 1) The contract accounts receivable and accounts payable items on the balance sheet disclosing transactions with related organizations. In addition, a list detailing all debtors and creditors with their outstanding balances shall be included with the financial statements. Balance sheets shall be submitted quarterly.
- 2) The statement of changes in financial position disclosing all significant transactions affecting the Contractor's financial position during the year;
- 3) Inventories of all fixed assets and equipment, in accordance with Exhibit E, Additional Provision 37, Liquidated Damages, and under the cost reimbursement provisions of the contract, at the start of Operations and at the end of each operational phase.

- 4) A summary of total operating revenue by source; and
- 5) All requirements listed in Exhibit E, Additional Provision 41, Minimum Financial Criteria.

C. Invoices to the Department

The Contractor shall submit separate invoices to the Department. The invoicing procedure shall be as described in Exhibit B, Attachment I, Special Payment Provisions, Invoicing. All invoices shall be sent to the Contracting Officer.

D. Accounting Ledgers

- 1) The Contractor shall maintain separate sets of accounting ledgers exclusively for the contract, and in connection therewith, identify, collect and separate costs by the following:
 - a) Takeover Task Expenses;
 - b) Operations Task Expenses;
 - c) Hourly Reimbursed Special Groups;
 - d) Change Order Expenses;
 - e) Turnover/Runout Task Expenses;
 - f) Hourly Reimbursement Expenses; and
 - g) Cost Reimbursement Expense by Category.

The Contractor will provide the Department online, real-time database access of these accounting ledgers via the desktop computer to Department staff required to have access to these records. The site where the desktop computers will be available to access these accounting ledgers will be determined by the Department.

- 2) Separate records must be maintained by the categories stipulated in Exhibit B- Attachment I, Special Payment Provisions, Cost Reimbursements. Separate records must be maintained for postage incurred for:
 - a) Claim Forms, CIFS;
 - b) Mailing of provider manuals and updates;
 - c) RTDs returned to the provider;

- d) Zip Sort, if applicable;
- e) Notices of Authorization sent to providers;
- f) Responses to CIFS;
- g) Provider bulletins; and
- h) Miscellaneous mailings (provider inquiry responses, etc.).

E. Estimated Expenses

At the Contracting Officer's request, the Contractor shall submit to the Department a projected statement of total expenses associated with the contract for each State fiscal year broken down by major tasks (Takeover, Operations, Hourly Reimbursed Special Groups, Change Orders, Cost Reimbursement, Hourly Reimbursement, and Turnover/Runout) nine (9) months prior to the beginning of each State fiscal year. A revised estimate shall be furnished four (4) months prior to the beginning of the fiscal year. The projected expenses shall be delineated as follows:

1) Staff expenses

Individual projections shall be made for each major task: Takeover; Operations; Hourly Reimbursed Special Groups; Change Orders; Cost Reimbursement; Hourly Reimbursement; and Turnover/Runout. Such projections shall include numbers of staff by classification.

Separate projections shall be made for each subcontract.

2) All other expenses

Separate projections shall be made for all other major categories of expenses as listed on the Bid Price Forms (Attachments 12-1 through 12-15) or defined by the Department during the life of the contract.

3) Subcontracts

F. Actual Expenses

At the Contracting Officer's request, the Contractor shall submit quarterly fiscal progress reports relating the actual expenses to estimated expenses for major tasks (Takeover, Operations, Hourly Reimbursed Special Groups, Change Orders, Cost Reimbursements, Hourly Reimbursement, Turnover/Runout), including all items specified in the projected statement of expenses. The report will indicate, for each category:

- 1) Current quarterly estimated and actual expenditures;
- 2) Year-to-date estimated and actual expenditure; and
- 3) Life (beginning of contract to date) estimated and actual expenditures.

G. Financial Management Manual

The Contractor shall maintain and update, as necessary, a financial management manual during the life of the contract that includes:

- 1) All the data specified in the CD-MMIS Financial Management Manual, available during the procurement of the contract in the Data Library; and
- 2) All requirements specified in Takeover.

44. Application To Parent Entities And Corporations And Subcontractors

The application of access, audit and accounting requirements in the contract to any parent corporation(s) and subcontractor(s) is set forth below.

A. Application To Parent Entities And Corporations

The Contractor shall be responsible for ensuring that Exhibit E: Additional Provision 31, Insurance and Bonding, and Additional Provision 50, Notice of Delay, shall apply to any parent entity(ies) or corporation(s) which provide(s) funds or services to the Contractor to meet its obligations under the contract or whose resources are utilized by the Contractor to meet the minimum financial criteria described in Exhibit E, Additional Provision 41, Minimum Financial Criteria.

B. Application to Subcontractors

The Contractor shall include the provisions of Exhibit E: Additional Provision 42, Financial Reporting Requirements; Additional Provision 43, Accounting Requirements; Additional Provision 50, Notice of Delay; and Additional Provision 51, Definition of Terms, in all subcontracts under the contract.

45. On-Site Audit And Monitoring Staff

- A.** The Contractor shall provide, through the life of the contract, adequate facilities for State and federal staff at the Contractor's place of business, including the following:

- 1) No later than four (4) months, fifteen (15) days after contract effective date:

- a) Separate space for Department monitoring and change management staff not to exceed forty (40) people.
 - b) Eleven thousand (11,000) square feet to accommodate the staff and necessary equipment. This space shall be in a contiguous location adjacent to the main CD-MMIS processing area and on the same floor as the Contractor Representative. This shall include space for up to twelve (12) private offices, one conference room, a break-room area, one (1) two hundred (200)-square foot room for a personal computer and equipment with appropriate cooling facilities and another four hundred (400)-square foot room for storage and supplies. All these rooms shall be equipped with locks, and all entrance doors to this area shall be equipped with keycard locks.
 - c) A keycard system is required for entrance to all Department staff-designated areas. All entrance doors to the Department- designated areas shall have a keycard system that does not require the use of the keycard during normal business hours (as determined by the Department), but will restrict and/or record access of staff entering after hours. Access information shall be maintained for a minimum of fourteen (14) days.
 - d) Space for up to five (5) additional State and/or federal audit staff on a temporary, as-needed basis, not to exceed seventy (70) State workdays in a twelve (12)-month period. Equipment necessary to perform these audit activities, such as desks, chairs, telephones, use of duplicating equipment, etc., shall be provided, as well.
- 2) Access to available Contractor parking space to provide free parking space for all State and federal monitoring and auditing staff as well as four (4) designated State visitor spaces, one (1) designated DHS-only parking space, and one (1) space designated for a State car. The State car-only parking space must be unmistakably identified as such and located near the facilities entrance. If the Contractor has designated parking for its managers, then designated parking must be available for Department on-site managers, adjacent to the space provided for Contractor management staff. Additionally, reasonable accommodation shall be made for parking for disabled State and federal staff as the need arises. Department employees shall have the same access to parking facilities as the Contractor employees.
- 3) Access to and provision of required support services such as:
- a) Electric outlets, two (2) for each Department staff desk location and sufficient others as are required by the State, including dedicated lines for Department equipment; data lines, both power and communication, one (1) for each Department desk location; printer cables at the Department's

option; connect printers to the Contractor's computer data center; and personal computer hookups for each staff person.

- b) The Contractor shall provide janitorial and maintenance services and restroom availability for on-site accommodations and for the staff.
 - c) At least two (2) restrooms (one (1) designated for Men, and one (1) for Women) to include adequate showers, a locker room and changing facilities to accommodate at least ten (10) staff each.
- 4) In addition to the above items, which are part of the fixed price, the Department may require the Contractor to provide modifications to this facility through the cost reimbursement provisions, such as the addition and/or installation of walls, partitions, modular furniture, any telecommunication links to the State data centers, and other equipment, services and monitoring tools for the Department to use for monitoring the contract.
- 5) The Contractor shall meet the requirements of the contract for ten (10) temporary on-site Department staff during the Takeover Period of the contract, commencing two (2) weeks after contract effective date.
- a) The Takeover on-site staff shall be housed immediately adjacent to Contractor staff working on transition activities. These staff shall be provided with desks, chairs, storage cabinets (e.g., bookcases); access to duplication equipment and lunch/break/restroom facilities; tables; two (2) locking file cabinets; at least two (2) private offices; one (1) conference room; multiple electrical outlets; telephone hookups to the Contractor's telephone system (at least one (1) for each Department staff work stations and one (1) for each private office); CRT cabling (one (1) for each Department staff workstation) and four (4) dedicated electrical lines; partitions sufficient to create staff workstations for each two (2) Department staff. At least eighty (80) square feet of space shall be allotted for each Department staff person.
 - b) Janitorial and maintenance service shall be provided in the Department work area during this time period.
 - c) This temporary space shall be available within two (2) weeks of contract effective date and shall remain available for the full eight (8) months of Takeover, either in the Contractor's temporary facilities, if and when the Contractor uses a temporary facility, or in the Contractor's permanent facilities. When permanent facilities are available, the Contractor may move the Takeover staff to these facilities. This move will be paid by cost reimbursement. Further, any long distance calls made by Department staff on the Contractor's telephone system shall be cost reimbursed.

- d) Free parking for all ten (10) temporary Department staff shall also be made available during the entire time of their occupancy, with at least four (4) spaces designated for management.

B. Auditing by State staff may occur at any time permitted by this contract, including during the run-out period and thereafter.

State staff will periodically conduct two (2) types of audits: (1) an adjudication audit which will be an audit of fully adjudicated and processed TAR/NOA/claim/CIF forms; and (2) a processing audit which allows the Department to randomly select TAR/NOA/claim/CIF/RTD forms as they are microfilmed, or transferred to electronic media, and assigned a control number, and then to follow those selected documents throughout both manual and automated processing to their final resolution and release of check/denial/NOA or other explanatory material to providers.

The Contractor shall make available to Department designated staff an ongoing sample of (1) Contractor processed and fully adjudicated TAR/NOA/claim/CIF forms for purposes of the adjudication audit and (2) TAR/NOA/claim/CIF/RTD forms as they are microfilmed, or transferred to electronic media, and assigned a control number for purposes of the processing audit, in a form and manner specified by the Department. The CIFs reviewed in the adjudication audit will be those submitted as requests for reconsideration or adjustments. Tracer CIFs will be reviewed during the processing audit. Records will be pulled for the adjudication audit on a full TAR/NOA/claim/CIF form basis and not on the basis of line items. That is, all line items associated with a given TAR/NOA/claim/CIF form will be subjected to the audit.

The documents used in either audit shall include all supporting documentation, including original radiographs as submitted by the provider. If directed by the Department, the Contractor shall be prepared to furnish reproductions of radiographs in lieu of the original radiographs. The ongoing sample of forms pulled for both the adjudication and the processing audits shall not exceed one thousand (1,000) sample documents per month. The one thousand (1,000) sample documents per month shall be in addition to any other record retrieval requirements noted in this contract.

Department staff will perform a periodic review of a sample of fully adjudicated forms and a sample of forms-in-process. These forms will be randomly selected based on document control numbers. Those forms being sampled for the adjudication audit will be diverted from normal processing for a period not to exceed three (3) State workdays. However, TAR/Claim/CIF forms that the Department has designated for discussion with the Contractor shall be retained over the review period. Those forms being sampled for the processing audit shall not be diverted from normal processing for more than one (1) State workday, in which time the Contractor shall photocopy the document for the

Department's use. Department staff may present their findings to Contractor designated staff within fifteen (15) calendar days of the completion of the review period.

Department staff will consider discussion of audit findings presented by the Contractor and will accept formal statements from them. Final determination of the appropriateness of a TAR/NOA/claim/CIF/RTD form decision, whether the decision is one (1) regarding professional/paraprofessional adjudication or any other aspect of manual and automated processing of the document, shall reside with the Department.

The adjudication audits will be made to establish whether there is a discrepancy between what was approved and paid by the Contractor and what would have been approved and paid by the State. The processing audit further establishes the accuracy of all processing, manual and automated. If discrepancies in amounts approved and paid or if inaccuracies in processing are found, the audit(s) will further establish the extent of the discrepancies and/or inaccuracies. The adjudication and processing audits may also be run simultaneously.

The Department will employ the statistical definitions, procedures, and formulae contained in Appendix 1, Formula for Adjudication Audit, in computing the precision of the discrepancy found in the adjudication audit results between what the Contractor approved and paid and what the Department would have approved and paid. The processing audit will employ the statistical definitions, procedures, and formulae set forth in Appendix 2, Formula for Processing Audit, of this document. These will be used in computing the error rate found in the review of all TAR/NOA/claim/CIF/RTD processing, manual and/or automated, which is determined based upon the Department's review of the processing of the sample of documents. Additionally, more selective and specific audits may be conducted by the State whenever findings from either the adjudication or the processing audits indicate the presence of a problem to establish the extent of the problem.

Underpayments (inappropriate Contractor denials or payments at less than the Medi-Cal allowable amount) shall not be considered in establishing erroneous Contractor payment levels nor shall they be used to offset overpayments for purposes of establishing a "net" error rate or amount in discrepancy. Underpayments will, however, count as errors in establishing the error rate described in the preceding paragraph.

At the Contracting Officer's discretion, findings of underpayments can lead to more extensive, directed and specialized claim/NOA/TAR/CIF auditing and monitoring by Department staff and the potential imposition of liquidated damages.

The Department will periodically establish an error rate encompassing both adjudication and processing activities. These rates will be used to assess Contractor performance. Findings from the audits may be a consideration in the annual setting of new pure premium rates.

To further assist the Department in its monitoring/auditing function, the Contractor shall provide, on a monthly basis, the following reports:

- 1) **TRENDED DENIAL RATES.** This report shall provide the following information for TARs/NOAs/claims processed during the month, by these document types: (1) document level denials by denial reason; by type of dental provider; by provider; by document control number; and by county of provider's service location; (2) detail line level denials by procedure code; by denial reason further summarized by specific administrative reasons vs. medical reasons; by type of dental provider; by provider; by document control number; and by county of provider's service location. This report shall also show the percentage increase/decrease between the subject month and the month immediately preceding it and the month one year prior, for the summary data presented; and
- 2) **TRENDED RTD RATES.** This report shall provide the following information for TARs/NOAs/claims, by these document types, processed during the month: (1) document level RTDs by RTD reason; by number of document level items RTD'd per document; by type of provider; by provider; by document control number; and by county of provider's service location; (2) number of RTDs by procedure code; by RTD reason, further summarized by specific administrative reasons vs. medical reasons; by number of items RTD'd per document; by type of dental provider; by provider; by document control number; and by county of provider's service location. This report shall also show the percentage increase/decrease between the subject month and the month immediately preceding it and the month one (1) year prior, for the summary data presented.

46. Prior Department Approval Requirements: Communication Between The Contractor And Providers And Beneficiaries

- A. Prior Department approval shall be received by the Contractor for all billing-related forms and authorizations; provider manuals, bulletins and newsletters; eligibility verification and provider telecommunication messages; form-letter communication with providers or beneficiaries; explanatory material on explanation of benefits (EOB) or remittance advice (RA) forms; claim status documents sent to providers; RTDs or CIFs; and individual correspondence to providers or beneficiaries addressing policy, benefit, payment, or regulation questions, unless the Department has approved previous "boilerplate" language. All changes to the above shall also receive prior written Department approval.

- B. For each and every occurrence where the Contractor fails to meet any of these requirements, the Contracting Officer may notify the Contractor in writing that the requirement was not met. The Contractor shall have five (5) State workdays to present to the Department for approval a written retraction or correction of previously released, unapproved material in publishable form, as well as the exact and itemized costs of developing, printing, producing, and mailing the unapproved material. With written Department approval, this retraction or correction shall be printed, produced and mailed to all providers receiving the original document(s) solely at the Contractor's expense within six (6) State workdays of Department approval of the retraction/correction. Further, the costs of developing, printing, producing, and mailing the original unapproved documents shall be borne solely by the Contractor and shall be deducted from the next administrative payment made to the Contractor by the Department.

47. Provider Requirements

A. Provider Records

The Contractor shall be aware of and inform providers that in accordance with Title 22, California Code of Regulations, Section 51476, each Medi-Cal provider shall be required to keep and maintain such records as are necessary to fully disclose the type and extent of such services provided to a Medi-Cal beneficiary.

The Contractor shall be aware of and inform providers that no provider shall refuse or fail to make available during regular business hours all pertinent records concerning the provision of dental services to a Medi-Cal beneficiary to any duly authorized representative of the State or federal government acting in the scope and course of his or her employment.

B. Assurance For Nondiscrimination

The Contractor shall be aware of and inform providers that they shall comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and all requirements imposed by or pursuant to the regulations of the federal Department of Health and Human Services (Title 45, Code of Federal Regulations, Part 80) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the regulations, no person in the United States shall, on the ground of race, color, religion, sex, age, disability, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives State financial assistance from the Department.

C. Provider Payment

The Contractor shall be aware of and inform providers that a provider shall not submit a claim to, or demand or otherwise collect reimbursement from, a Medi-

Cal beneficiary or from other persons on behalf of the beneficiary for any service included in the Medi-Cal Dental Program's scope of benefits in addition to a claim submitted to the Medi-Cal Dental Program for that service except to collect payments due where the benefits available under the Medi-Cal Dental Program duplicate those provided under other contractual or legal entitlements of the person or persons receiving them. (Welfare and Institutions Code, section 14019.3.)

D. Provider Suspected of Fraud

The Contractor shall inform all certified and enrolled providers of the Medi-Cal Dental Program of the above requirements as well as the information required to be included on the back of the claim form, in a Department approved provider bulletin sent to them following contract effective date, but prior to the start of claim processing. The Contractor shall also notify providers that their signature on a claim form shall certify their agreement to comply with requirements of the Medi-Cal Dental Program pertaining to providers, including those addressed on the back of the claim form. The Contractor shall assure that subsequent updates to the provider manual(s) do not delete or change this section unless such deletion or change is requested or authorized by the Department. The Contractor shall ensure that the back of the claim form contains the information required in Exhibit E, Additional Provision 47, Provider Requirements. Additionally, a form listing all the above requirements, as well as those currently displayed upon the back of the claim form, shall be included as a part of the provider enrollment application packet sent to prospective providers. Providers shall be informed that their signature upon a claim form shall certify their agreement to comply with all requirements of the Medi-Cal Dental Program pertaining to providers including those addressed on the back of the claim form.

The Contractor shall ensure that its staff is fully informed regarding the above requirements. The Contractor shall ensure that its policies, practices, and/or procedures in dealing with beneficiaries and providers support this section and fully meet its requirements. Further, the Contractor shall ensure that nothing in its policies, practices, and/or procedures under-mine or make the requirements of this section less effective.

Should the Contractor's staff become aware of provider policies and practices which contradict or appear to contradict the requirements of this section, they shall report such situations to the Contracting Officer who shall refer them to the appropriate party for further investigation and resolution.

The Contractor shall be responsible for referring providers suspected of Medi-Cal fraud or abuse to the Contracting Officer.

48. Provider Bankruptcies

The Contractor shall notify the Department of any pending, proposed or actual provider bankruptcies within three (3) State workdays after the Contractor becomes aware of such information. The Contractor shall inform the Contracting Officer of the provider's name, provider ID number, address and phone number and the extent of any current accounts receivable activity relating to that provider.

49. Travel

In addition to the travel provisions of Exhibit D(F), Special Terms and Conditions, Provision 2, Travel and Per Diem Reimbursement, the Department may, at its option, obtain airline tickets or other travel arrangements on behalf of the Contractor in lieu of paying the Contractor for travel expenses.

50. Notice Of Delay

Whenever the Contractor has knowledge that any actual or potential situation (including, although not limited to, labor disputes) is delaying or threatens to delay timely, accurate, or required performance of the work under the contract, the Contractor shall immediately, but not later than twenty-four (24) hours after learning of the situation, give written notice and provide all relevant information to the Contracting Officer. The Contractor shall require such notice from all subcontractors and the requirement shall be placed into the language of the subcontract itself. Such notice does not relieve Contractor of its contractual obligations.

51. Definition Of Terms

Where there is a conflict in terminology, the parties shall first rely on the definitions provided within the Glossary of Terms (see Appendix 4). If the glossary does not define the term, then a definition within the body of the contract will prevail. In the absence of a definition in the Glossary of Terms within the body of the contract, the parties agree to use the usual and customary meaning of a terminology.

52. Use of Numerical Estimates

Numerical estimates are used throughout the Contract to provide further illustration of certain narrative material. These estimates are not represented by the Department as future workload the Contractor can expect nor as actual projections of expected activity or volumes. The Contractor must develop its own estimates and projections for purposes of submitting the Technical Proposal and the various price bids. The exception to this is the Adjudicated Claim Service Lines/Treatment Authorization Request (ACSL/TAR) volume ranges and the TSC volume ranges, for which the Contractor shall provide prices for processing the volumes specified in the ranges.

53. Access Requirements

A. State's Right To Monitor

The State shall have the right to monitor all aspects of the Contractor's performance of the contract.

Wherever a duty of access is imposed on the Contractor or its subcontractors in the contract, the Contractor shall have a duty to cooperate, which shall not be withheld, with Department staff, authorized State and/or federal representatives, or the Contracting Officer's designees.

B. Access To Premises

To assure compliance with the contract and for any other reasonable purpose, the State and its authorized representatives and designees, as authorized by the Contracting Officer, shall at all times have the right of access, with or without notice to the Contractor, to the Contractor's, or its parent corporation's, premises. Such premises shall include the CD-MMIS operations site, or such other place where duties under the contract are being performed, including the Contractor's data center, to inspect, monitor, or otherwise evaluate the work performed or being performed therein, or to elicit information concerning the operation of the CD-MMIS or any related work.

- 1) The Contractor shall honor badge requests for State and federal personnel promptly with temporary badges provided upon request. Permanent badges, including picture badges, must be supplied in five (5) State workdays, as authorized by the Contracting Officer. The Contractor shall provide a badge system consisting of:
 - 2) A badge requiring an escort;
 - 3) A badge requiring no escort for all secured areas; or
 - 4) Such other security identification as may be approved by the Contracting Officer.
- 5) The Contracting Officer shall designate which State and federal staff shall have each category of badge.
- 6) All security areas shall be accessible to staff designated by the Contracting Officer. For any instances of access in any area by the Department, the Contractor shall provide, and shall require any subcontractor to provide, all reasonable facilities, cooperation and assistance to such State representatives in the performance of their duties. All such instances of access shall be undertaken in such a manner

as will not unduly delay work. The right of access referred to herein shall include on-site visits by authorized designees of the Department, including potential Proposers for the purpose of reprourement of a successor Contractor.

- 7) If the above-stated Contracting Officer's authorized designees include the Contractor's competitors during the reprourement of the contract, the Contracting Officer will give the Contractor at least forty-eight (48)-hour notice prior to the visit. If the above-stated Contracting Officer's authorized designees include the Contractor's successor, the Department will attempt to give twenty-four (24) hour prior notification to the Contractor. Should circumstances not permit such twenty-four (24) hour prior notification, the Contractor, upon proper identification of the authorized designees of the Contracting Officer, shall make required escorted access immediately available. This provision shall continue through contract transition. Such access shall be for the purpose of facilitating required Takeover activities.
- 8) The successor Contractor's designated staff shall be issued visitor badges which require that the staff be escorted at all times within the Contractor's facilities, except when in Department/State locations, or any cost-reimbursed locations on the Contractor's premises. Badging and escorting responsibilities of the Contractor shall not be unduly withheld or delayed. Such access will not interfere with the Contractor's ongoing operations. During the period of time access is allowed to the successor Contractor, should any dispute between the Contractor and the successor Contractor arise as to any issue concerning this access, either party may request the assistance of the Contracting Officer. A mutually agreeable resolution will be sought between the Contractor, the successor Contractor and the Contracting Officer. If a mutually agreeable resolution is not reached within five (5) days, the Contracting Officer shall make a final decision, subject to Exhibit E, Additional Provision 23, Disputes and Appeals.
- 9) Federal DHHS/CMS or General Accounting Office (GAO) officials and other authorized State and/or federal personnel shall have the right to independent access to Contractor's premises, upon the Contracting Officer providing the Contractor with a list of persons named by DHHS/CMS or other State and/or federal agencies as authorized to enter all Contractor premises engaged in contract activities, and upon a showing of proper credentials to the Contractor. The Contractor will permit access to premises according to such a list that the Contracting Officer shall keep current.

C. Access To CD-MMIS Information

- 1) The Contractor shall provide on-line, read-only access to the entire CD-MMIS libraries to authorized State and federal representatives.
- 2) Documentation for the CD-MMIS shall be maintained separately, including, but not limited to program documentation and procedures when staff, resources, facilities, and/or equipment are shared with other accounts of the Contractor.
- 3) The Contractor shall provide immediate access to State and CMS personnel upon written and/or oral (subsequently followed in writing) of the Contracting Officer, or his/her designee, for examination and review of all libraries and titles pertaining to the CD-MMIS maintained on magnetic storage media; program listings; computer logs; data element dictionaries; procedure manuals; narratives; specifications; report libraries; or any other material as described in the contract, including program documentation and claims payment records required for the Department's on-site monitoring, in a form and manner specified by the Department.
- 4) The Contractor shall maintain a library containing all updated procedure manuals and information related to DOILs and SDNs that shall be immediately accessible to State and CMS staff. Also, the Contractor shall provide access to the Contractor's internal reports and to its employees with knowledge of documentation, program specification, or manual processes.
- 5) During the final nine (9) months of contract operations, the Contractor shall provide a successor Contractor with access for examination, review, and/or duplication of materials, to all libraries and titles pertaining to the CD-MMIS that are contained in procedure manuals, program listings, narratives, or specifications. Also, the Contractor shall provide access to its employees with knowledge of documentation, program specification, or manual processes. Such access will not interfere with the Contractor's ongoing operations.

54. Audit Requirements

A. General

- 1) The Contractor shall maintain current books of account, records, documents, and other evidence pertaining to its managerial, financial, and operational policies, procedures, functions, and processes.
- 2) All records, books of account, papers, and supporting documents of the Contractor, any affiliates or parent companies which may allocate or share expenses or assist or provide for the Contractor's meeting Minimum Financial

Criteria (see Exhibit E, Additional Provision 41, Minimum Financial Criteria), or any subcontractor providing services to the Contractor shall be open to inspection during normal business hours by the Department, its authorized representatives, or by other State or federal agencies with statutory or regulatory audit authority.

- 3) All such records, books and papers described above shall be available for review in the State of California within five (5) state workdays of request except in such instances where the Contractor's headquarters is located outside California and such documents cannot be reasonably expected to be made available for review in California.
- 4) In order to examine the Contractor's records, books of account, papers, and documents as may exist outside the State of California the Department may, upon reasonable notice, require that such records, books of account, documents, and papers, or a specified portion thereof, be made available for examination in this State or that with a certification statement, a true and accurate copy of such records, books of account, documents and papers, or a specified portion thereof, be furnished to the Department within five (5) state workdays of receipt of request.
- 5) The books of account, records, documents, and other evidence pertaining to the Contractor's managerial, financial, and operational policies, procedures, functions, and processes shall not be removed from the State of California without prior written consent of the Contracting Officer.
- 6) The Contractor's accounting procedures and practices shall conform to generally accepted accounting principles. Costs applicable to the contract shall be separately identifiable and readily ascertainable there from. Revenue and expense records pertaining to the contract shall be in sufficient detail to readily identify revenue source and all direct and indirect costs under the provisions of the contract.
- 7) All books of account, records, and documents shall be maintained separately for the CD-MMIS.
- 8) The requirements of Title 48, Code of Federal Regulations, Part 31, shall be applied in determining the allowable direct and indirect costs incurred by the Contractor for cost reimbursable work performed on the contract or work ordered by a Change Order or Amendment.
- 9) This Provision shall be incorporated in any subcontract of ten thousand dollars (\$10,000) or more. It shall also be incorporated in any subcontracts entered into with one (1) entity or affiliates where the total dollar value of all such subcontracts exceeds ten thousand dollars (\$10,000).

- 10) If a parent corporation(s) is utilized by the Contractor in meeting Exhibit E, Additional Provision 39, Conflict of Interest, Incompatible Activity of Contractor and Employees, requirements, the above provisions shall be applicable to that parent corporation(s) as well.

B. Audit Of Pure Premium Fund And Financial Viability

The Department shall procure a CPA firm to perform an annual audit of the status of the PPF, and the Contractor's financial viability as compared to contract financial requirements. Except for the final year of the Pure Premium Period (PPP), an audit shall commence eleven (11) months after the end of each underwriting year and include twelve (12) months of service information and provider payments through the thirteen (13) months following the end of the underwriting year. The audit shall be completed—including delivery to the Contractor and to the Department of a report of findings and recommendations—in sufficient time to be used in the determination of gain or loss for each underwriting year, but no later than fourteen (14) months after the end of the underwriting year, unless the twelve (12)-month reconciliation has not been completed. If the twelve (12)-month reconciliation has not been completed, the audit completion deadline will be extended to adjust for this delay. For the final year of underwriting, which shall be adjusted by any extensions and which is the last year of the PPP, the audit shall commence thirteen (13) months after the end of the underwriting year and include provider payments through the end of Runout, fifteen (15) months after the end of the PPP. The audit shall be completed and shall be used in the final determination of gain or loss, but no later than sixteen (16) months after the end of the PPP. All pre-audit functions shall be completed prior to commencement of the audit. At the Department's option, it may direct the Contractor to contract with the CPA firm.

The audit shall be conducted in accordance with generally accepted accounting principles. The Department will use the findings and recommendations of each such report as part of its on-going CD-MMIS monitoring process. The CPA firm shall be required to abide by the security and confidentiality requirements of the contract as these relate to the protection of data, material and information received as a result of these audits from unauthorized disclosure to any third (3rd) party without the prior written approval of the Contracting Officer.

The scope of the financial audit shall include the following:

- 1) The current financial status of the PPF;
- 2) The amount of State pure premium payments into the PPF;
- 3) The amount of interest and investment income deposited in the PPF;
- 4) The amount of recoveries deposited in the PPF;

- 5) The amount of direct service costs paid out of the PPF;
- 6) The status of cost reimbursable expenditures and State payments into the PPF;
- 7) The determination of gain or loss for the year and for the entire contract to date for the PPF and the sharing of the gain and/or loss between the Contractor and the State in accordance with contract provisions;
- 8) The assessment of the adequacy of the Contractor's financial resources as required by contract provisions and measured by TNE, working capital ratio, administrative cost ratio, and financial security; and
- 9) For the final year of the PPP and for contract Close-Out a final determination of gain or loss in the PPF, the Contractor's and State's gains or losses at contract end, and the amount due to or from both the Contractor and the State. This audit shall include a summarization of the gain or loss settlements for each year and a determination of the net gain or loss.
- 10) The Department shall be the third party beneficiary of any auditing contract between the Contractor and the audit firm. Further, prior to the beginning of all required audits, the audit firm shall confer with the Department to discuss the scope, breadth and depth of the audit. The audit firm shall present its proposed audit plan to the Contractor and the Department concurrently. The Department shall have sole responsibility to approve the audit plan prior to commencement of the audit.
- 11) The Department has the option to direct the Contractor to contract for this audit. If this option is exercised, the State shall receive copies, concurrent with the Contractor, of any and all audit reports, both draft and final. The Department shall also have access to all related working papers. The Department shall have ultimate right to accept or reject any audit report submitted to it by the Contractor. Should an audit report be rejected, in whole or part, the Contractor shall ensure that the work is redone within the timeframes specified by the Contractor Officer, at no additional costs to the State. If the Contractor fails to obtain an audit as required above, the Department may, after notice and at its option, employ an independent CPA firm to complete the required audit, in which case, no payment to the Contractor will be made for the original audit.

Should the Department direct the Contractor to contract for this audit, the audit will be cost reimbursed by the Department.

The actual scope of work in the above audit(s) will be determined by the Department in writing prior to commencement of the work.

C. Audit of Electronic Data Processing Application Systems

The Department will procure an audit contractor annually to perform an EDP audit. The contract shall be with an independent CPA firm that has experience in conducting electronic data processing and Statement on Auditing Standards Number 70 (SAS 70) audits in accordance with auditing standards provided by the American Institute of Certified Public Accountants for applications comparable with the scope of this CD-MMIS application. The contract shall require the CPA firm to perform an electronic data processing in accordance with SAS 70 requirements to audit the general and application controls on the CD-MMIS and the Contractor's quality control efforts. At the Department's option, it may direct the Contractor to contract with the CPA firm.

- 1) It is anticipated the audit will include a number of processing functions. The Contracting Officer will specify the functions to be audited. The audit will report control weaknesses and the effects to their respective functions. An audit shall be conducted eight months from the start of operations and at twelve (12)-month intervals thereafter. The CPA firm shall deliver to the Contractor and to the Department a report of findings and recommendations within three (3) months of the close of each review period. The audit shall be conducted in accordance with generally accepted auditing standards for electronic data processing application reviews and shall conform to the Codification of Statements of Auditing Standards, Number 70, AU Section 324, numbers 1-93, as amended. The audit report shall be in accordance with AU 324.24(b).
- 2) The Department will use the findings and recommendations of each such report as part of its ongoing CD-MMIS monitoring process. The CPA firm shall be required to abide by the security and confidentiality requirements of the contract as these relate to the protection of data, material and information received as a result of these audits from unauthorized disclosure to any third party without the prior written approval of the Contracting Officer.
- 3) The scope of the Electronic Data Processing (EDP) Audit, as defined by the Contracting Officer, will be to test services provided to the Department/State for compliance with contract requirements and may include, but not be limited to, the following:
 - a) Inter-department Organizational Controls;
 - b) Intra-department Organizational Controls;
 - c) Input and Output Controls;
 - d) The User Operations Manual;

- e) User and Systems Contingency Plans;
- f) Controls Over Program Modification, including, but not limited to:
 - f-1] Verification that all deliverables were approved prior to any system modification;
- g) Adequacy of Systems Documentation, including, but not limited to verification that all systems documentation are clear and concise;
- h) Back-up, Recovery, and Access Controls;
- i) Review of Subsystems;
- j) Review of Automated Controls;
- k) Review of Security and Confidentiality Procedures including, but not limited to:
 - k-1] Verify reporting from security as to access violations has been transmitted to the Department as set forth in the Security and Confidentiality Section of the contract;
- l) Data Processing Back-up and Recovery including, but not limited to:
 - l-1] Ensure that Disaster Recovery was performed the previous year. If not Disaster Recovery Drill was performed, review justification as to why the drill was not performed and include in audit;
 - l-2] Review prior years drill for compliance with the Disaster Recovery Provisions set forth in the contract;
 - l-3] Ensure that all issues experienced with the previous years Disaster Recovery Drill have been resolved;
- m) Data Security and Integrity Review including, but not limited to:
 - m-1] Ensure all Contractor employees have appropriate level CD-MMIS access in accordance with their position;
- n) Definition of Computer Audit Software;
- o) Updating of Manuals and System Documentation;
 - o-1] Ensure that updates of manuals are timely, in accordance with their Cyclical Updates or as system modifications warrant;

- p) Adequacy of Risk Analysis;
 - q) Completeness and Accuracy of Data Generated for Reports to DHS, including reports generated to support the accuracy of the payment invoices referred to Exhibit B-Attachment I, Special Payment Provisions, Invoicing. These reports include the general CD-MMIS billing reports.
 - r) Controls to ensure that Contractor employees are not inappropriately or fraudulently paying claims and whether these controls are being used;
 - s) Controls to ensure that the Contractor is abiding by Department-established policy; and
 - t) Controls to ensure that the contractor is not operating or utilizing programs not approved by the State and whether these controls are being used.
- 4) The Department shall be the third party beneficiary of any auditing contract between the Contractor and the CPA firm that will be conducting the EDP audit. Further, prior to the beginning of required audits, the CPA firm shall confer with the Department to discuss the scope, breadth and depth of the audit. The CPA firm shall present its proposed audit plan to the Contractor, which shall, in turn, present this plan to the State for review and approval prior to its execution.
- 5) The Department has the option to direct the Contractor to contract for this audit. If this option is exercised, the Department shall receive copies, concurrent with the Contractor, of any and all audit reports, both draft and final. The Department shall also have access to all related working papers. The Department shall have the ultimate right to accept or reject any audit report submitted to it by the Contractor. Should an audit report be rejected, in whole or part, the Contractor shall have the audit/report redone within time constraints imposed by the Contracting Officer, at no additional cost to the Department. If the Contractor fails to obtain an audit as required above, the Department may, after notice, and at its option, employ an independent Certified Public Accountant firm to complete the required audit, in which case, no payment to the Contractor for the original audit shall be made.

Should the Department direct the Contractor to contract for this audit, the audit will be cost reimbursed by the Department.

The actual scope of work in the above audit(s) will be determined by the Department, in writing, prior to commencement of the work.

- 6) Any problems identified in the reports shall be handled in accordance with the Problem Correction System.

- 7) The provisions of this Provision shall apply to subcontracts in that subcontractors shall be required to assist the independent CPA firm in performing the audit of electronic data processing application systems of the Contractor as this audit relates to work performed under the subcontract(s).

C. Access to and Audit of Contract Records

- 1) In addition to the requirements found in Exhibit D(F), Special Terms and Conditions, Provision 7, Audit and Record Retention, the Contractor and subcontractor shall:
 - a) Preserve and make available their records for an additional period of four (4) years from the date of final payment under this agreement; thus, total record preservation and availability will be seven (7) years.
 - b) Promptly notify the Contracting officer of any request for access to any CD-MMIS records by any governmental agency.
- 2) Should the Department direct the Contractor to contract for the audit, and should the audit or examination find that the Contractor is not fulfilling its responsibilities according to the terms of the contract or that reports furnished in compliance with the provisions of the contract are not true and correct, the Department shall have the right to invoke any remedy available under the contract or under law or equity. Should an audit or examination described above find that the Contractor has received payment to which it is not entitled under the contract, such payments may be recouped by the Department subject to the Contractor's right to dispute the recoupment as set forth in Exhibit E, Additional Provision 21, Notification of Claims. Based on an audit or examination, the Department may seek recoupment, through offset or legal action, following termination or expiration of the contract.

55. Escrow Bid Documents

A. Scope

- 1) The Contractor identified in the Notice of Intent to Award shall submit, within three (3) days after the posting of the Notice of Intent to Award, one (1) copy of all documentary information developed by the Contractor in preparation of bid prices for this procurement. This material is hereinafter referred to as "Escrow Bid Documents." The Escrow Bid Documents of the apparent successful bidder will be held in escrow for the duration of the contract. All other Proposers not identified in the Notice of Intent to Award shall be prepared to submit Escrow Bid Documents upon request of the Department, in the event the contract is not awarded to the Contractor identified in the Notice of Intent to Award. Escrow Bid Documents will be used to assist in the

negotiation for the settlement of claims, in the resolution of disputes, and in Change Order pricing. They will not be used for pre-award evaluation of the bidder's anticipated method of operations or to assess the Proposer's qualifications for performing the work.

- 2) The successful bidder agrees, as a condition of award of the contract, that the Escrow Bid Documents constitute all of the information used in preparation of the bid, and that no other bid preparation information will be considered in resolving claims. Nothing in the Escrow Bid Documents shall change or modify the terms or conditions of the contract.
- 3) If the bidder's proposal is based on subcontracting any part of the work, each subcontractor, whose total subcontract price exceeds the lesser of five percent (5%) of the total contract price proposed by the bidder, or two hundred thousand dollars (\$200,000), shall provide separate Escrow Bid Documents to be submitted with those of the bidder. These submittals will be examined in the same manner and at the same time as the examination for the apparent successful bidder.

B. Ownership and Confidentiality

- 1) The Escrow Bid Documents are, and will always remain, the property of the bidder, subject only to joint review by the Department and the Contractor.
- 2) The Department stipulates and expressly acknowledges that the Escrow Bid Documents constitute trade secrets, and are proprietary and confidential.
- 3) The Department agrees to safeguard the Escrow Bid Documents, and all information contained therein, against disclosure to the fullest extent permitted by law.

C. Format and Contents

- 1) Bidders may submit Escrow Bid Documents in their usual cost-estimating format. Escrow Bid Documents shall be adequate to enable complete understanding and proper interpretation for their intended use. Escrow Bid Documents shall clearly itemize the estimated costs of performing the work, for each level of work specified in the RFP (e.g., all Takeover activities, each Hourly Reimbursed Special Group, etc.). Items shall be separated into sub-items as required to present a complete and detailed cost estimate and allow a detailed cost review. The Escrow Bid Documents shall include all labor (including monthly salary rate or wage range for each position title), equipment, calculations of rate of production and progress, copies of quotations from subcontractors and suppliers, and memoranda, narratives, consultant's reports, add/deduct sheets, and all other information used by the bidder to arrive at the prices contained in the price proposal. Estimated costs shall be broken down into the bidder's usual estimate categories such as

direct labor, repair labor, material, equipment, equipment operations, expendable materials, materials, and subcontract costs as appropriate. Plant and equipment and indirect costs shall be detailed in the bidder's usual format. The bidder's allocation of plant and equipment, indirect cost contingencies, markup and other items shall be included.

- 2) All costs shall be identified. For items and sub-items amounting to less than ten thousand dollars (\$10,000), estimated unit costs are acceptable without a detailed cost estimate, providing that labor, equipment, materials, and subcontracts, as applicable, are included, and provided that indirect costs, contingencies, and markup, as applicable, are allocated.
- 3) Bidding materials provided by the Department shall not be included in the Escrow Bid Documents unless needed to comply with the requirements of this provision.

D. Submittal

- 1) The Escrow Bid Documents shall be submitted by the apparent successful bidder in a sealed container. The container shall be clearly marked on the outside with the Proposer's name, date of submittal, procurement identification, and the words "Escrow Bid Documents."
- 2) The Escrow Bid Documents shall be accompanied with an index to inventory the contents of the submittal, and the Bid Documentation Certification (Exhibit E-Attachment I) signed by an individual authorized by the Proposer to execute the price proposal.
- 3) Prior to award, only the index to the Escrow Bid Documents of the apparent successful bidder will be examined by the representatives of the Department. This examination is to ensure that the index is detailed and complete, and conforms to the format and content requirements set forth herein. If all the required documentation has not been indexed in the original submittal, a revised index shall be submitted at the Department's discretion, prior to award of the contract.
- 4) If the contract is not awarded to the apparent successful bidder, the bidder next to be considered for award shall, upon request of the Department, submit Escrow Bid Documents for processing within three (3) days of notification. Timely submission of complete Escrow Bid Documents is an essential element of the bidder's responsibility. Failure to provide the necessary Escrow Bid Documents may be sufficient cause for the Department to reject the bid.

E. Storage

The Escrow Bid Documents shall be placed in escrow for the life of the contract, in an institution acceptable to both the Department and the Contractor. The cost of storage will be paid by the Contractor.

F. Examination after Award of the Contract

The Escrow Bid Documents shall be examined by both the Department and the Contractor, at any time deemed necessary by either the Department or the Contractor, to assist in the negotiation for the settlement of claims, in the resolution of disputes, and in Change Order pricing. Examination of the Escrow Bid Documents is subject to the following conditions:

- 1) As trade secrets, the Escrow Bid Documents are proprietary and confidential.
- 2) The Contracting Officer and the Contractor shall each designate, in writing to the other party and within a minimum of five (5) days prior to examination, representatives who are authorized to examine the Escrow Bid Documents. No other person shall have access to the Escrow Bid Documents; and
- 3) Access to the Escrow Bid Documents will take place only in the presence of duly designed representatives of both the Contracting Officer and the Contractor.

G. Final Disposition

The Escrow Bid Documents shall be returned to the Contractor at such time as the contract has been completed and final settlement has been made.